
SOCIAL AND POLITICAL DIMENSIONS OF FOREST CERTIFICATION

edited by

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PREFACE

Forest certification programs seek to assure the buyers of wood products that the wood they are getting was produced in an environmentally and socially acceptable manner. Certification programs are growing very rapidly around the world, and their rise to prominence poses many interesting and important questions. To date, most public and academic discussion of certification has focused on forest management and marketing issues, with an emphasis on technical questions. While those are important, it is becoming increasingly clear that the future of certification programs will depend heavily on their social and political implications. It is time to take a careful look at those implications, and this book is one of the first efforts to do so in a sustained, broad based, academically rigorous way. It seeks to link detailed expertise on forest certification with broader theoretical and political perspectives on policy making, social justice, law, and governance, addressing issues such as the following:

- **Changing Institutions.** How does forest certification relate to traditional policy making and implementation institutions? Are the received roles of policy actors being altered?
- **Democracy and Governance.** How democratic is certification? What avenues exist for public participation and accountability? How much does certification expand public influence on forest management. Is it structured so people can see the implications of their choices and learn from them?
- **Social Standards.** Does forest certification promote social and environmental justice? How can it be made to do so more effectively? Does certification contribute to the well-being of forest dependent communities? How can it protect the resource claims of indigenous peoples?
- **Legal Systems.** How does certification relate to traditional legal regulation of resources and the economy? Are legal systems incorporating certification standards? What can legal systems learn from certification, and vice versa?

Our effort to address these issues began with a conference hosted by the Institute of Forestry Economics at the University of Freiburg, Germany, June 20-22, 2001. The conference produced an intensive and sophisticated dialogue regarding social and political issues in certification. It brought together a carefully selected group of participants with a broad range of expertise, in both forestry and the related disciplines of anthropology, economics, geography, law, political science, and sociology, including experts from developing countries. The format was informal and conversational. The goal was to achieve maximum interchange and development of ideas without getting bogged down in debates concerning the relative merits of different certification programs. Participants engaged in sustained discussions both during and after the conference.

This book grows out of the Freiburg conference. While a number of the articles in it were presented in first draft at the conference, others were stimulated by the conference and prepared later. We believe that together, the articles provide an unusually thorough and multi-faceted review of the social implications, quandaries, and prospects of forest

certification. The papers are not all in agreement - far from it. But they contain a valuable and balanced dialogue on the emerging questions, and lay the groundwork for both further dialogue and continuing research on the issues. We publish them with pleasure and anticipation of the discussions they may stimulate. We hope they will appeal not only foresters, but also to those in the broader fields of environmental policy, sustainable development, international governance, social movements, regulatory policy, and policy studies. We hope they will be useful not only to academics, but also to practitioners and activists in the fields of community development, environmental management, labor protection, human rights, and fair trade.

We wish to express our strong appreciation to the organizations and individuals who have provided essential support to this effort. First, the German Organization for Technical Cooperation (GTZ), the Andreas-Stihl Foundation, and WWF provided critical financial support for the June 2001 conference. Second, the Institute of Forestry Economics has provided great administrative and logistical support - as well as three beautiful summer days for the conference - contributing immeasurably to the success of this project. Third, the Christopher Baldy Center for Law and Social Policy of the State University of New York at Buffalo provided critical support for Errol Meidinger's work on the conference and book. Fourth, among the many individuals who have contributed to the conference and the book we want to acknowledge the contributions of the following people in particular: Michael Becker, Dietrich Burger, Kai Fischer, Michael Flitner, Carol Grossmann, Jochen Krebuehl, Barbara von Kruedener, Peter Sprang, and Angelika Weidner. Finally, we wish especially to thank Stephanie von Detten, who undertook the exacting task of producing the final version of this book with coeditors scattered in three different countries, and often traveling in others. She has done a terrific job.

Errol Meidinger, Chris Elliott and Gerhard Oesten
November, 2002

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SECTION I

OVERVIEW OF SOCIAL ISSUES AND INTERESTS

THE FUNDAMENTALS OF FOREST CERTIFICATION*

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INTRODUCTION

Although many readers of this book will be familiar with forest certification, we hope that others will be relatively new to the subject. To date, forest certification has been discussed primarily in forestry circles. This book is part of an effort to extend that discussion into the wider community of people interested in environmental policy, sustainable development, transnational institutions, social justice, and new modes of governance. To that end, this chapter offers a concise overview of forest certification programs as they exist today. Subsequent chapters explore their many social and political implications. We invite readers who are not familiar with forest certification programs either to read this chapter at the outset or to refer back to it when additional information on certification would be helpful to understanding other chapters.

* The authors thank Amor Balada, Emily Noah, Margaret Shannon, and Peter Sprang for their comments on earlier drafts of this paper but retain sole responsibility for any errors.

ESSENTIAL ELEMENTS OF FOREST CERTIFICATION PROGRAMS

The Concept of Forest Certification

What does it mean to ‘certify’ a forest? Obviously, it does not mean certifying the forest *per se*, since that would be unintelligible. Rather, it means certifying that the people responsible for a forest are taking care of it properly. Thus, from a commonsensical perspective forest certification implies that: (1) we understand what it means to take care of a forest properly and that (2) a trustworthy person who understands proper forest management (3) visits the forest and assesses the work of the people who manage it and (4) certifies to others that things are being done correctly. Conversely, if the forest is not being managed properly, certification is withheld.

Although the basic idea of forest certification is readily understandable, forest certification is not yet a customary practice or a long-standing tradition. Rather, it is an emerging practice. This means that its basic elements must be worked out and converted into standard practices and procedures before forest certification can achieve wide social recognition. Since efforts to institutionalize forest certification have been going on for about a decade, most of the basic process and practice questions have become apparent, as have alternative ways of addressing them. The purpose of this section is to provide an overview of the general issues and practices that characterize forest certification to date. The next section will make them concrete by providing a brief history of forest certification and describing several existing forest certification programs, including their main similarities and differences.

Before proceeding to describe forest certification, however, we offer two brief notes to place it in context. First, as the above description of forest certification implies, neither the general idea of certification nor the specific idea of forest certification is new. Certification programs have long existed in other economic sectors, such as appliance manufacturing, quality control, and health care services.¹ The rise of certification programs in the forestry sector is striking because non-governmental actors are taking up functions traditionally claimed by the agencies and ministries of nation states: the setting and implementation of forestry standards intended to protect broad public interests in proper forest management. But despite the traditional state predominance in the forestry sector in most countries, forest certification programs did not have to invent themselves out of thin air. Rather, they were able to draw upon models and techniques that had been developed and standardized by

¹ In the U.S., for example, Underwriters Laboratories (UL) had been setting safety standards for electrical appliances and monitoring manufacturer compliance for almost a century when forest certification began. The National Fire Protection Association (NFPA) had been setting fire safety standards for buildings (although not certifying them) for nearly as long. The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) had been setting standards for and certifying health care organizations for over four decades. There are certainly hundreds and probably thousands of such programs around the world. See e.g., Cheit (1990).

programs performing similar functions in other sectors.² Thus, forest certification is inherently linked to developments in other sectors.

Second, despite the numerous similarities across certification sectors and programs, many differences in terminology exist and can cause confusion. We hope to reduce that confusion by clarifying our use of terminology at the outset. We use the term 'certification program' to refer to a formally designed framework under which multiple organizations with different responsibilities work via mutually accepted rules and procedures to determine whether specific forest management organizations (FMOs) are conducting good forestry. Thus, the rules, procedures and activities of the Forest Stewardship Council constitute a program, as do those of the Sustainable Forestry Initiative. These are described in more detail below. Programs are sometimes called 'schemes' or 'systems' by other authors. In those rare instances when we use the term 'scheme,' we refer to the abstract models, plans, and rules of programs. We use the term 'system' in two ways: (1) by itself to refer to the coordinated behaviors of multiple organizations in implementing a certification program and (2) in 'environmental management system' to refer to the coordinated behaviors of actors within a particular FMO to develop and implement an environmental management plan for that organization. We use the term 'organization' to refer to a concrete group of people who are formally organized in a set of roles and responsibilities to achieve a specific purpose. A forestry enterprise is an organization, as is a certification body, as is the organization charged with overseeing a certification program. We use the term 'forest management organization' (FMO) to include the broad range of organizations (for-profit, state-owned, community-based, etc.) that manage forests and are potentially eligible for certification. The next section describes some common functions that occur across certification programs with generic terms, such as standard setting, certification, and labeling. We use the term 'institution' to refer to a standardized set of practices and relationships for performing a given function. Different certification programs may use similar institutions. Thus, an institution is neither a particular organization nor a particular place, but rather a standardized set of practices and roles.

Institutional Elements of Forest Certification Programs

Because the concept of forest certification is fairly commonsensical and because there is a considerable fund of experience with certification in other sectors, the basic issues and institutions of certification have emerged rapidly. We describe them in two general categories - standard setting and implementation - and then break down implementation into several subcategories: certification, accreditation, labeling and other administrative matters.

Standard Setting. Before they can certify properly managed forests, certification programs must first define proper forest management. As is described below and throughout this book, all existing forest certification programs seek to promote sustainable

² Much of this standardization had been brought under the umbrella of the International Organization for Standardization (ISO), which is a global federation of approximately 140 national standard setting bodies that has developed international standards for countless types of industries and practices.

forest management (SFM).³ SFM has been the subject of continuing debate in the larger field of forest policy and has undergone considerable change in recent decades. The basic tendency of that change has been to broaden the set of considerations that forest managers must take into account, from (1) ensuring a steady flow of timber from the forest, to (2) protecting the range of ecological functions, components, and services provided by the forest, to (3) protecting the many societal interests tied to the forest. Since the specific requirements of the term are still subject to much debate, it is not surprising that certification programs have put great effort into defining it. We will describe substantive differences among their standards in the next section. Here we describe the basic institutional options.

First, standards can be set at different levels: for the program as a whole, for local areas covered by the program, or for specific FMOs. In practice, organizations at each of these levels usually also play a role in standard setting, surprising as it may sound.⁴ This is in part because it is impossible to set standards in sufficient breadth and detail to dispose of every possible situation. Given the variability of local situations around the world and rapid changes in knowledge, it often makes sense to leave some important details to local decision makers.

Second, and relatedly, standards typically specify either (1) performance outcomes or (2) management systems. Performance standards require the achievement of concrete conditions in the forest or in human organizations related to the forest. For example, a performance standard might require that an FMO maintain a specified mix of tree species and age classes over a given period. Or it might require that workers be protected so as to have less than a specified number of serious accidents in a given period.

A management system standard, on the other hand, focuses on defining management responsibilities and processes within the FMO. The most influential such standard is the ISO 14001 environmental management standard (EMS) recently developed by the International Organization for Standardization (ISO). The basic idea is to require the FMO to define and implement a specific set of responsibilities and processes for dealing with environmental and related issues. EMSs typically include arrangements for ascertaining the organization's environmental effects, planning how to increase the positive ones and/or decrease the negative ones, and achieving 'continuous improvement.' The underlying argument for EMSs is that harnessing the planning and control capacities of the FMO to the goal of improving environmental performance may achieve better results in a dynamic and uncertain environment than would a reliance on fixed performance standards (see e.g., Coglianese and Nash 2001).

All existing certification programs employ each of the standard setting options described above (i.e., central/local/FMO and performance/management system) to at least some degree, but in quite different mixes as will be described below. Programs also vary by

³ The FSC, however, maintains that since we do not yet have the knowledge to know which forest management practices are sustainable, it is only possible to certify that forests are 'well' managed.

⁴ The idea that the FMO could be a standard setter may sound odd, particularly to those who see standard setting in parallel to governmental regulation. In fact, however, allowing local variations in performance to reflect the particular circumstances of firms has a long history in governmental regulation, although it is often buried in the inspection process (e.g., Hawkins 1992)

which kinds of actors participate at each level. While all of them permit stakeholder participation to some degree, the amount, location, and nature of participation vary greatly. Finally, the standards of forest certification programs vary considerably in scope. While most standards focus on biological conditions, some also include social justice concerns such as the protection of laborers, indigenous peoples and local communities.

Implementation. Forest management standards may have little effect unless the certification program has a way of assuring that FMOs implement them. Given that meeting standards often entails costs, and that FMOs generally have incentives to minimize costs, certification programs must have institutional arrangements for assuring that certified FMOs in fact comply with the standards. These arrangements are conventionally described in terms of to three interrelated functions: certification, accreditation, and labeling.

1. **Certification.** Certification of FMOs is the core function of forest certification programs. To carry it out the programs must define organizational processes and relationships likely to assure compliance with applicable forest management standards. To be useful, these arrangements must also persuade outside observers that they are likely to result in a high degree of compliance - i.e., they must be credible. While all forest certification programs rely to some extent on the internal processes of FMOs, they also rely on outside monitoring. The most rigorous approach is 'third party verification,' wherein a person or organization that is neither part of the FMO, nor one of its customers or suppliers, is given authority to assess compliance with the program standards. Not all certification programs require third party verification, however. Even where it is used variations in how it is implemented may lead to differences in reliability. Perhaps the most important variable is the degree of control that the forestry enterprise can exercise over the certification body and its findings. Some programs give FMOs much more control over the selection, terms of employment, and findings of certifiers than do others. Overall, there has been a steady tendency among forest certification programs to institute third party verification, but there are still enormous differences among them. Even the most rigorous programs still face questions of credibility deriving from the fact that certifiers are paid by the FMOs seeking certification.
2. **Accreditation.** When programs embrace third party certification, an important question immediately arises as to who should be qualified - i.e., be 'accredited' - to serve as a certifier. Some certification programs make their own accreditation determinations, while others use accreditation organizations that developed for other purposes (sometimes under the ISO umbrella), and some allow FMOs to make their own determinations as to who qualifies as a certifier.
3. **Labeling.** The last key element of a forest certification program is how it ties wood products sold in consumer markets to certified forestry operations. All major certification programs have now developed programs for attaching their labels to wood products. Their rules for determining which wood products qualify, and particularly how those wood products must be traced through the chain of production ('chain of custody requirements' - COC), are quite variable and remain under development.

Finally, we should note that in practice implementation processes often play a standard setting role as well, as certifiers work out expectations for concrete situations that were not anticipated or not fully understood in the standard setting process. Hence it is important that certification programs have mechanisms for providing feedback between their implementation and standard setting processes. Carrying out all of the functions described above requires considerable administrative capacity, and we will also describe some basic organizational features of certification programs in the next section.

EXISTING FOREST CERTIFICATION PROGRAMS

The idea of forest certification gained currency in a series of discussions among North American and European environmental activists and socially conscious tropical hardwood users in the 1980s and early 1990s. It was particularly attractive to environmentalists because they saw it as a way of responding to the widely perceived problem of tropical deforestation and yet not supporting a boycott of all tropical timber, as had been proposed by some environmentalists in developed countries. The great advantage of certification was that it could provide a means to identify tropical timber that was properly grown and harvested, thus allowing northern consumers to buy tropical hardwoods without feeling that they were contributing to tropical deforestation. It soon became apparent, however, that to be perceived as fair, such a program would have to apply to tropical and non-tropical timber alike, since there was widespread and justifiable skepticism about the sustainability of much management in temperate and boreal forests.

Starting with the Forest Stewardship Council (FSC) in 1993, forest certification programs proliferated rapidly. Today there are anywhere between six and twenty or more, depending on how one counts.⁵ At a more general level, however, they are converging around two alliances, one centered on the NGO-oriented⁶ FSC and the other centered on the forest production-oriented Pan European Forest Certification Council (PEFC). To provide a working understanding of standard setting and implementation in forest certification, the remainder of this section presents brief overviews of four programs: the

⁵ The most recent report of the Confederation of European Paper Industries (CEPI 2001) lists 20 programs: (1) FSC International, (2) PEFC International, (3) American Forest & Paper Association Sustainable Forestry Initiative, (4) American Tree Farm System, (5) Czech Council of the National Certification Center, (6) Finnish Forest Certification Council, (7) Lembaga Ekolabel Indonesia (LEI), (8) Living Forests Norway (PEFC affiliated), (9) PEFC Austria, (10) PEFC Council of Latvia, (11) PEFC France, (12) PEFC Germany, (13) PEFC Sweden, (14) PEFC Switzerland and HWK Zertifizierungsstelle, (15) PEFC UK, (16) Standards Council of Canada, (17) Associação Brasileira de Normas Técnicas, (18) CEF - Certificación Española Forestal, (19) Conselho Da Fileira Florestal Portuguesa, and (20) Malaysian Timber Certification Council. Many of these are affiliated with and were developed by the PEFC, and therefore this may be seen as an overcount; on the other hand, as the FSC's national and regional standard setting efforts progress and potentially develop increased autonomy, it could also come to be seen as an undercount. In any event, the list does give a sense of the fluidity of program boundaries in the field.

⁶ 'NGO' stands for 'non-governmental organization' and is used in this paper primarily to reference environmental protection and social justice advocacy organizations.

FSC, the Sustainable Forestry Initiative (SFI) in the U.S., the Lembaga Ekolabel (LEI) in Indonesia, and the PEFC.

The Forest Stewardship Council⁷

Growing out of the discussions noted above, the Forest Stewardship Council was officially founded in 1993 as a non-governmental, non-profit, multi-stakeholder organization. Although promoted primarily by environmental NGOs, including the World Wide Fund for Nature and Greenpeace, the FSC was structured as a free standing organization which would incorporate members with a full range of interests, from environmental protection to commercial development to social justice.

The FSC was designed both to develop globally applicable forest management standards and to deploy an institutional system for implementing those standards. In both regards, developments by the FSC have driven those by other forest certification programs, so we will describe the FSC program in some detail.

Standard Setting. The FSC standard setting process was able to draw upon the worldwide discussion of sustainable development occurring at the time, and quickly produced a set of guiding principles requiring that certified forestry operations:

1. comply with applicable laws and treaties;
2. ensure that long term tenure and use rights are clearly established;
3. recognize and respect indigenous peoples' legal and customary rights,
4. maintain or enhance the social and economic well-being of forest workers and local communities;
5. use forest resources efficiently to ensure economic viability;
6. conserve biodiversity and protect ecological functions;
7. implement a long term management plan;
8. monitor management performance and environmental and social impacts;
9. protect high conservation value forests (e.g., those that contain endangered biota or fulfill crucial ecological or social functions); and
10. manage plantation forests so as to reduce pressure on natural forests.⁸

Almost simultaneously, FSC developed a series of more concrete criteria and indicators to help implement these general principles, and certification under them commenced. Indeed, some certification had been carried out by individual certification organizations even before the founding of the FSC.

Meanwhile, however, the FSC instituted a number of national and regional⁹ standard setting processes intended to adapt the general principles and criteria to fit local conditions. Local standard setting processes are conducted by stakeholder groups representing

⁷ Most of the discussion of the FSC is based on research published in Meidinger (1999), Elliott (2000), and Sprang (2001).

⁸ See the FSC website (<http://www.fscoax.org/principal.htm>) for a full quotation of the FSC Principles. There were originally nine principles, and the ninth and tenth have been debated and revised in recent years.

⁹ 'Regional standards' are developed for sub-areas in large nations where the forests and other factors differ significantly from one region to another.

important constituencies in the locale. Approximately a dozen national and regional standards have been completed by local groups and approved by the FSC; several dozen more are at various stages of development. These standard setting processes have highlighted the challenges inherent in using stakeholder processes to develop locally appropriate standards which are also expected to be consistent with the global principles and criteria as well as with standards in neighboring or otherwise comparable jurisdictions. The FSC is currently developing harmonization processes to address these challenges.

Overall standard setting authority remains vested in the members of the FSC acting as a 'general assembly.' The general assembly is divided into three chambers - environmental, economic, and social - each with equal voting power. Each chamber is further divided into a 'northern' (developed country) and 'southern' (developing country) sub-chamber, again with equal voting power. Membership in the FSC is open to all individuals and groups (other than governmental organizations) that subscribe to its principles and whose membership application is supported by at least two existing members. The international FSC presently has about 600 members, about two-thirds of which are organizations and one-third individuals.

Implementation. Although it is still developing, the FSC implementation system has always been relatively elaborate.

1. Certification. The primary work of certification is done by a small number of organizationally independent certification organizations. The certifiers use multi-disciplinary teams to review the on-the-ground management operations of each forestry operation that applies for certification. A typical FSC certification would involve roughly the following steps:
 1. preliminary discussions between the potential applicant and one or more certifiers, including indications of what changes the applicant likely will have to make to achieve certification;
 2. submission of an application to a certifier, including documentation of the applicant's operation;
 3. negotiation of a budget and other contractual terms of the assessment, possibly including a 'scoping' process;
 4. on-the-ground field assessment, including required consultations with local stakeholders;¹⁰
 5. preparation of a draft assessment report by the certifier;
 6. peer review of the report by two or three independent specialists;
 7. discussion of possible terms and conditions of certification with the applicant;
 8. a final certification decision (see below);
 9. certificate issuance, processing of final payments, further certification contracts, press releases, etc; and
 10. random annual follow-up audits.

¹⁰ Most stakeholder consultation processes to date have been developed by certification organizations. The FSC is now working to systematize information on and approaches to local consultation.

Certifiers have several options in reaching a final decision on certification: (1) approve an application unconditionally; (2) grant provisional approval on condition that certain corrective actions are taken within a certain time; (3) indicate that approval will be granted after certain preconditions are met; or (4) deny the application. Certificates ordinarily last for five years, after which time a thoroughgoing reassessment occurs prior to renewal.

To date approximately 30 million hectares of forest land have received FSC certification. Most of that land belongs to relatively large forestry operations, although some belongs to small individual and community landowners. It is possible for small landowners to seek certification as a group, and a few have done so. The FSC is working to find additional ways to make certification more accessible to small landowners. Almost two-thirds of FSC-certified forest land is in Europe. North and South America each have less than one-sixth, respectively, and the remaining very small portions of certified land are in Africa and Asia. Although the FSC has certified more forest land in tropical countries to date than any other program, its relatively slow progress there has given rise to discussions about whether the standards are too high for tropical forestry to reach in one step, and whether phased or 'step-wise' approaches should be developed. These would create intermediate stages of forest management quality and could allow buyers to support producers who are making satisfactory progress toward an acceptable level of forest management.

2. Accreditation. Certifiers in the FSC system are directly accredited by the FSC. Although the early accreditations of certification organizations were quite individualized, the FSC has developed a set of accreditation requirements and procedures and is currently working to clarify and standardize them. The FSC's capacity to monitor the work of certification organizations has been constrained by limited staff and funding, but efforts have been stepped up as certifiers' activities have expanded, and one certifier recently lost its accreditation for a brief time. The six FSC accredited certification bodies that occupied the field for several years have now multiplied to almost a dozen, and are continuing slowly to proliferate.
3. Labeling. Wood based products deriving from certified forests are entitled to carry the FSC's logo, a "checkmark and tree" image¹¹ developed shortly after the FSC's founding. To ensure the accuracy of the logo, the FSC provides 'chain-of-custody' (CoC) certificates for firms selling certified products in consumer markets, of which about 2500 presently exist. It has also developed a 'percentage based claims' policy allowing for the certification of wood fiber products such as paper when they consist of a satisfactory fraction of FSC certified forest fiber. In the course of grappling with

¹¹ The FSC Logo:



the relative desirability of using virgin certified fiber versus recycled untraceable fiber, this policy has spawned an important and potentially far reaching debate about the scope of FSC's mission: should it continue to limit itself to certifying good forest management, or should it expand to certifying environmentally responsible use of forest products?

4. Administration. The FSC's operational authority is vested in a nine-member board of directors elected to staggered three-year terms by the general assembly. The board is responsible for managing the organization, dispersing its budget, provisionally admitting members, and a host of other activities that, while nominally ministerial, have played a significant role in shaping the policies of the organization. Much of the daily work of the FSC is carried out by an international secretariat of approximately two-dozen individuals headed by an executive director. A growing amount of administrative responsibility is also being carried out by national initiatives around the world, many of which remain quite small but most of which are growing. The FSC is relocating its central administrative offices from Oaxaca, Mexico, to Bonn, Germany, and is also setting up new regional offices for the Americas, Africa, and Asia to serve national initiatives in those regions. The great majority of FSC's financial support comes from private foundations and environmental organizations, with perhaps one-sixth deriving from membership fees and certification. The FSC is working on ways to expand revenues from use of its logo.

The Sustainable Forestry Initiative¹²

The Sustainable Forestry Initiative (SFI) was developed by the largest timber products trade association in the U.S., the American Forest & Paper Association, partly in response to the growth of the FSC. At the beginning of 1995 participation in SFI became a requirement for continued membership in the AF&PA, which has traditionally had approximately 200 members. Added impetus for the program came from opinion polls indicating that the American public held the forest products industry in low and possibly declining regard.

Standard Setting. The first SFI standards were developed primarily by AF&PA staff members. They were guided by consultations with AF&PA member companies and by a series of focus group sessions aimed at ascertaining what standards and program were likely to be regarded by the American public as credible. The guiding SFI principles included: (1) practicing sustainable forestry, defined to include protecting the interests of future generations while growing and harvesting trees; (2) promoting responsible forestry among other forest landowners; (3) improving long term forest health and productivity; (4) taking into account the special biological, cultural, or other significance of lands; and (5) achieving continual improvement of forest practices. (6) Compliance with applicable forestry and environmental laws was initially assumed and later made explicit.

¹² This section is based on research reported in Meidinger (1999), Noah and Cashore (2002), Cashore, Auld and Newsom (forthcoming), the Meridian Institute (2001) and the materials available on the SFI website: <http://www.afandpa.org/forestry/sfi>.

Like the FSC standards, the SFI ones use principles and indicators, but they also rely more heavily on environmental management systems (EMSs). Overall, the SFI standards are considerably more favorable to industry than the FSC ones, particularly regarding the use of chemicals, exotic species, genetically modified organisms, and harvesting techniques such as clear cutting. Moreover, in accordance with the ISO approach, they rely heavily on 'best practices' or other even less prescriptive language leaving it largely to forest managers to set applicable requirements. In addition, they are considerably narrower than the FSC standards, omitting requirements for protecting workers, indigenous rights, and local communities. In 1998 SFI developed a less managerially demanding version of its standards for use by small, non-industrial forest owners.

Over the years the SFI standards gradually have been bolstered, apparently driven in part by unfavorable comparisons with the FSC standards. Another important spur was the establishment of an external review panel, recently re-christened the 'Sustainable Forestry Board' (SFB), to provide oversight for the program. One-third of the current fifteen-member Board are AF&PA members, while the other two-thirds come from environmental and conservation organizations, government agencies, non-industrial forestry, and academic and professional groups. The SFB's role in the SFI Program has grown very rapidly in recent years, and it now appears to have primary responsibility for developing and refining the SFI standard, although the AF&PA retains ultimate authority for program approval. Opportunities for participation by non-forest owners or professionals in the SFI program remain quite limited, but the SFB does maintain an internet site to receive comments on the program. Finally, the SFI also has established State Implementation Committees to engage local stakeholders in adapting SFI standards to individual state situations, although little information has been published on how these committees might be affecting SFI standards.

Implementation. The SFI implementation system has undergone steady change since its inception.

1. Certification. SFI started out as a very modest program requiring only a letter from the chief executive of each member company affirming that the company was in compliance with the program. Such a letter is still required, but the program has gradually built a 'voluntary verification' program involving a third party audits. The company has a great deal of control over the selection of a verification team and the use of its findings. No peer review of audit findings is required, nor is any public participation process, although it may be offered at the discretion of the company. If a company wishes to publicize the results of a third party audit, it must also provide a brief summary of the audit results. Recertification occurs after three years; interim annual checks are not required. The SFI program currently covers approximately 50 million hectares of land, of which SFI says that approximately 35 million hectares will have completed third party verification by the end of 2002.

SFI has gradually expanded the program beyond AF&PA members, first by instituting a 'logger training' program, and more recently by adding a licensing program for small landowners and by recognizing a parallel certification program developed by the

American Tree Farm System for small landowners under the specially adapted version of the SFI standard mentioned above.¹³

2. Accreditation. SFI does not operate its own accreditation program. Instead, it requires that the leader of any third-party verification team be certified as an 'environmental management systems lead auditor' under the appropriate ISO affiliated national accreditation body,¹⁴ that a professional forester serve on each team, and that the team include expertise in wildlife ecology, silviculture, forest hydrology and operations (not necessarily in separate individuals). The SFB does have a 'verifiers accreditation subcommittee,' however, and it is possible that more requirements will be introduced.
3. Labeling. The SFI has developed a progressive series of logos for use by program participants, starting with a relatively mechanical one with three deciduous trees in receding profile, then moving to one with a bear and fish circling one conifer and one deciduous tree, and recently culminating in a 'tree and shield' logo.¹⁵ Rules for the use of the new logo have been under long development, but provisions have been made for certain forms of it to be displayed on products of companies holding third party certification and also in their promotional literature. Secondary producers using the label must have an auditing system to verify that at least two thirds of the wood or fiber used comes from a certified SFI or American Tree Farm Operation.
4. Administration. Primary responsibility for administering SFI has shifted from AF&PA staff to the SFB. The SFB recently filed articles of incorporation to establish itself as a separate entity, although approximately five-sixths of its funding still derives from the AF&PA. The SFB also has developed various subcommittees to deal with issues such as interpreting the standard, developing policies for high conservation value forests, dealing with other certification programs, resolving disputes, accrediting verifiers, and the like, and is in the process of building up its own staff. All in all, then, the SFI program has undergone considerable expansion and elaboration during its short history, and seems likely to continue to do so.

¹³ The American Tree Farm System consists of a network of state based committees organized to promote SFM through education in the mid-20th century. Certification under the program requires landowners to develop and implement a written management plan with performance measures for reforestation, slash disposal and utilization, chemical usage, forest appearance, water quality, wildlife habitat, special site protection, and soil conservation, based on the SFI standard. They then undergo inspection by a volunteer member of the Tree Farm committee in their state.

¹⁴ Examples include the American National Standards Institute/Registrar Accreditation Board and the Canadian Environmental Auditing Association. Even this requirement only becomes effective one year after the relevant national accreditation body accepts SFI audit experience as appropriate for meeting its experience requirements.

¹⁵ The SFI Logos:



Lembaga Ekolabel Indonesia¹⁶

Like the FSC, the Lembaga Ekolabel Indonesia certification program has its origins in the tropical timber controversy of the mid-1980s. At that time scientists and Indonesian NGOs began voicing concerns about deforestation in the archipelago, which contains one-tenth of the world's remaining tropical forest and is one of the world's largest tropical timber producers. Related threats of a tropical timber boycott from developed countries prompted Indonesian forestry officials and companies to consider protective responses. This situation created very complicated dynamics. On one hand, threats to export markets set up strong pressures to improve forest management. Such improvements, moreover, were viewed as very desirable by many Indonesians. On the other hand, the demands were also viewed as coming from outsiders who might have little interest in Indonesian society, and some of whom might have interests in increasing barriers to trade. Moreover, certification posed the possibility of setting in motion changes in the internal Indonesian power relationships, at both the central and the community levels.

Nonetheless, over time Indonesia acted to establish a certification program. First, in concert with the International Tropical Timber Trade Organization (ITTO),¹⁷ Indonesian timber interests committed to bring all lands from which timber is exported under sustainable management by 2000. In hopes of increasing the credibility of that commitment in a country with an established reputation for poor timber management and widespread official corruption, they also began work to develop a certification program.

Standard Setting. The Indonesian Forestry Community (MPI - a group of non-governmental forestry companies) set up a working group to develop SFM criteria and indicators in 1992, and the next year the Indonesian government's Forestry Minister established a parallel working group to include NGOs in the discussions. Government involvement in Indonesia is particularly important since the national constitution gives the state control over all natural resources. The government in turn allocates hundreds of 20-year timber 'concessions' covering large tracts of land to a multitude of private and public forestry enterprises, which are then responsible for carrying out management and harvesting activities. Participation by the holders of these concessions and other non-governmental timber interests is equally important because they are organized in large conglomerates wielding great political power.

By late 1997 the negotiations had produced agreement on criteria and indicators among the working group, the Ministry, forest concession holders, and the Indonesian national standards body (an ISO affiliate). It is worth noting that the negotiations involved a complex set of relationships between Indonesian actors working in established, relatively closed power structures, as well as a few outside actors, primarily environmental organizations.

¹⁶ This section is based primarily on Elliott (2000), Balada (2001), the LEI website, <http://www.lei.or.id/>, and the EFI Country Report for Indonesia at <http://www.efi.fi/cis/english/creports/indonesia.phtml>.

¹⁷ The ITTO is an intergovernmental organization whose member countries include both producers and consumers of tropical timber. Its primary purposes are the production and exchange of information regarding tropical timber and the development of policies on all aspects of the global tropical timber economy. Headquartered in Yokohama, Japan, the ITTO has slightly less than 60 member countries.

Despite the controlled nature of many discussions, the draft standards incorporated a fairly broad set of viewpoints. Early discussions drew on both ITTO guidelines and the FSC principles and criteria.

The LEI standards are performance rather than management-system oriented, and are divided into three broad areas: (1) sustainability of production functions, including criteria for forest resource, forest product, and business sustainability; (2) sustainability of ecological functions, including criteria for ecosystem stability and species survival; and (3) sustainability of social functions, including criteria for secure community-based tenure, community resilience and development, social and cultural integration, community health, and employee rights. All of the standards and criteria are somewhat more general than the FSC ones, leaving considerable room for interpretation by certifiers, but they are also more comprehensive and far reaching than the SFI ones.

Implementation

1. **Certification.** The Indonesian standard contains a certification procedure and a certification decision making procedure. The certification procedure is roughly parallel to that of the FSC: (1) a preliminary assessment of management plans and documents by one team of assessors, (2) a field assessment carried out by a separate team of assessors, (3) a performance evaluation by the second team, which if positive is discussed with local stakeholders, and (4) a decision on whether to award a certificate. The final decision is to be based on a logical framework organized along two dimensions: inputs and outcomes. A gold rating is given to any concession with no weakness on either dimension, whereas a silver or bronze rating is given to concessions weak in one dimension or the other. Weakness in both dimensions results in a denial of certification.

In the course of trying to establish a credible certification program, LEI has engaged in continuing discussions with the FSC and some of its certifiers. These led initially to an agreement that FSC certifiers operating in Indonesia would apply the LEI framework, and more recently (September 2000) to an agreement that the programs would join forces by applying both standards simultaneously. Thus, only forest management units meeting both LEI and FSC requirements may be certified under either program; successful operations are entitled to receive both certificates and to use both labels. To date, one concession of approximately 91,000 hectares has received such a joint certification; approximately nine others totaling 1.4 million hectares are in process. More recently, supported by the German Organization for Technical Cooperation (GTZ), LEI has developed a certification program for community-based forest management and is working with two local NGOs in a pilot project to test the program.

As noted above, the difficulty tropical forestry operations face in achieving certification, combined with the fact that most modern forest management practices have their origins in temperate forestry systems where practices and rules are more institutionalized, have led some to argue for a 'step-wise' or phased approach to certification in tropical forests (e.g., Atyi and Simula 2002). This would allow buyers to

trade with tropical producers who are making progress toward satisfactory forestry practices but who are not yet there, and at least arguably create useful incentives for further progress. The debate on this question is ongoing, however, and it is unclear where it will lead.

2. Accreditation. The program was originally set up so that LEI would manage the entire certification process, including the selection of certifiers, but has since moved into an FSC like role as an accreditor of certifiers and not a certifier itself. Accordingly, it has also accredited a small group of four external certifiers to apply the LEI standard.
3. Labeling. The LEI program includes chain of custody provisions and rules setting the conditions for the use of its logo.¹⁸ Timber theft and a thriving market in false log documentation, however, pose significant implementation challenges.
4. Administration. The central actor in implementing the Indonesian certification program is the LEI organization, which was founded in 1998 as an independent, non-profit institute and received critical startup funding from the Indonesian government, the World Bank, the EU, and, often indirectly, WWF and some American foundations. In addition to its role as a standard setting and accreditation body, LEI is responsible for overall program development, supervision and monitoring. Although LEI is the central actor in the Indonesian system, it acts in a political vortex of powerful government officials, concessionaires, and demanding environmental and social NGOs.

The Pan-European Forest Certification Council¹⁹

The most recent entrant to the certification constellation, the Pan European Forest Certification Council (PEFC), operates in a different geographical and political environment than LEI, but its origins trace to some of the same events that gave rise to LEI, namely the tropical deforestation debate and its aftermath. Until the mid-1980s, most European forestry operations saw themselves as technically advanced and politically secure. Their concern was to receive fair treatment in market competition with tropical timber, which they saw as often deriving from inferior forestry operations. Accordingly, some European forestry establishments strongly supported forest certification for tropical timber in the early days, seeing it as a way to achieve a level playing field in the market.²⁰ Many were upset, however, when some environmental NGOs turned the spotlight on them and started to push for

¹⁸ The LEI Logo:



¹⁹ This section is based primarily on Indufor 2002, Noah and Cashore 2002, Sprang 2001, and the PEFC website: <http://www.pefc.org/>

²⁰ Indeed, in one of the most controversial events of the time, Austria adopted a statute requiring that timber products from tropical countries be certified as deriving from sustainable sources. It later repealed the requirement in response to international pressure and its apparent violation of international trade law.

certification of European forestry operations. They were even more upset when some major forestry companies, particularly in Sweden and Poland, complied and when FSC national standard setting processes in several European countries took off.

These developments led to a series of reactions among many traditional members of the traditional European forestry community, and particularly among smaller landholders who saw themselves as disadvantaged in the FSC system and who also resented its implied criticism of their traditional stewardship. First, many denied that certification of European forestry was necessary or appropriate, pointing to their legal systems and customary management practices as proof that there was no problem to be addressed. Under continuing pressure, however, they gradually shifted positions and accepted certification, but decided to develop their own program. Out of these decisions PEFC emerged, holding organizing meetings in 1998 and coming into official existence in 1999. By design, the PEFC certification system is probably the most variable, and therefore the most difficult to describe. Perhaps it is most aptly characterized as a growing international network of nationally based certification programs which are centered primarily on forest landowners but also draw in other production oriented stakeholders.

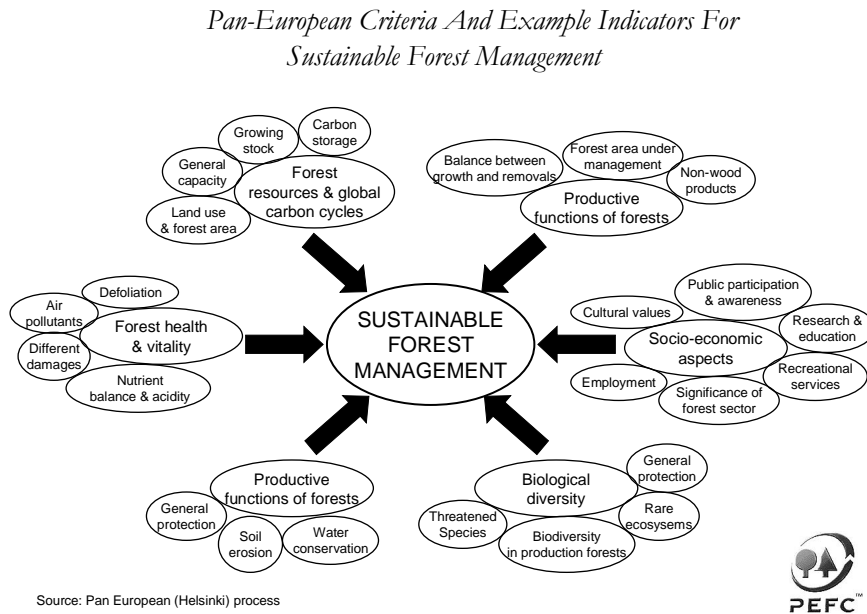
Standard Setting. The PEFC came into a world in which much discussion of SFM standard setting had recently occurred and in which numerous standards existed. Its founders therefore drew upon the available materials to create a framework useful to them. At a formative meeting held in Helsinki in late 1998 they adopted a set of six criteria and nine guiding principles. The criteria were products of an earlier 'Helsinki Process' (since renamed the 'Pan-European Process') that began in 1993 with a meeting of European Forest Ministers and representatives from a total of 40 countries.

1. Criteria and Principles. Given the number of interests to be reconciled, it is not surprising that the principles are quite elastic:
 1. maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycles;
 2. maintenance of forest ecosystem health and vitality;
 3. maintenance and encouragement of productive functions of forests (wood and non-wood);
 4. maintenance, conservation and appropriate enhancement of biological diversity in forest ecosystems;
 5. maintenance and appropriate enhancement of protective functions in forest management (notably soil and water); and
 6. maintenance of other socio-economic functions and conditions.

The ministerial conference was followed up by several meetings of experts, which produced a large set of descriptive indicators that could be used to give measurable content to the general criteria. They were intended to be advisory rather than binding, however, and as tools that could be used in different ways within individual countries. Consistent with this approach, the PEFC adopted a quite flexible view of the criteria, as represented in Figure 1. Rather than setting specific standards, they are general concerns that can feed into many locally adjusted definitions of SFM.

The guiding principles adopted by the PEFC were also very general, evidently intended to indicate expansive purposes which can be fulfilled in many different ways: (1) pursuing SFM, (2) credibility, (3) non-deceptiveness, (4) open access and non-discrimination, (5) cost-effectiveness, (6) participation, (7) transparency, (8) subsidiarity,²¹ and (9) voluntariness.

Figure 1: PEFC Diagram of SFM Criteria (Gunneberg 2000)



In sum, the PEFC criteria and principles, while linked to the ongoing SFM discussion, were kept broad enough to be reconciled with most and indeed probably all of the European forestry systems. This reflected one of the underlying assumptions of the PEFC, which was that the primary purpose of its certification program was to verify the good practices that already existed, rather than to eliminate bad practices or to improve the overall level of performance. Consistent with this premise, the PEFC defined itself not as promulgating a single standard to be deployed widely, but rather as providing a common framework for the mutual recognition of variable national certification programs built upon existing practices. These programs, however, were not to be administered by the government agencies that had previously been

²¹ Subsidiarity does not appear to be defined in PEFC documents, but it is generally used to refer to the idea that larger, more complex organizations should not be used to carry out functions that can be performed by smaller, more focused ones.

responsible for developing and administering forestry standards. Rather, they were to be based in stakeholder groups initiated by forest owners in the individual countries.

2. National Standards. Standards among the dozen national programs endorsed by PEFC to date vary considerably, and are difficult to characterize. Some, such as those of the UK and Sweden, include specific performance standards, while others, such as those of France and Germany, focus on management systems, using local and national laws as backstops. Many provisions implementing the PEFC criteria are framed either as recommendations or as rules to which managers are free to make exceptions, adding up to an overall system of great complexity and variability. The PEFC national standard setting processes seem to have catalyzed considerable engagement and participation by non-industrial landowners in many countries, and in some cases to have made them more active in forest policy matters generally.

Implementation

1. National Program Development. Since the PEFC focuses on mutual recognition of national certification programs, and since few national programs preexisted the PEFC, the implementation process includes the development of national programs. The PEFC statutes and technical documents define a relatively detailed process for the creation of PEFC national governing bodies. The essential elements are that (1) an existing forest owners' organization invites other national organizations representing 'relevant and interested parties' to constitute a 'national governing body;' (2) the resulting national governing body elects one delegate to the PEFC Council (the delegate will have from one to three votes depending on the volume of timber harvested in the country), and the Council in turn elects a Board of Directors; (3) meanwhile, the national governing body also constitutes a forum, again inviting all relevant parties (e.g., forest owners, trade unions, NGOs), the purpose of which is to develop a certification program appropriate to that country; (4) the resulting certification program is documented and submitted to the Board of Directors, which (a) appoints independent experts to prepare a report assessing the proposed program under PEFC criteria, (b) considers the proposed program in a process with several different options, including sending it back for revisions, and (c) after it is satisfied with the proposal submits it to the Council for endorsement. Membership in the Council presently consists of sixteen European members,²² as well as SFI and the Canadian Standards Association, with six European applications pending. Twelve national

²² PEFC Austria; WoodNet asbl - Belgium; CSA International - Canada; The Council of the National Certification Centre - Czech Republic; PEFC Denmark; PEFC France; Forest Certification Council, Finland; PEFC Germany e.V.; PEFC Council of Ireland; PEFC Italia; PEFC Latvia; PEFC Norway; Conselho Da Fileira Florestal Portuguesa, Portugal; PEFC España, Spain; Swedish PEFC Co-operative; PEFC Switzerland; PEFC UK Ltd.; American Forest and Paper Association (which includes the Sustainable Forestry Initiative and the American Tree Farm System)

certification programs have received PEFC endorsement.²³ Recently, PEFC has announced its intention to recognize tropical forest certification programs as well.

2. **Certification.** Although the PEFC requires an assessment process to ensure compliance with national standards, the meaning of assessment and certification in the system are still being worked out both within and among the national programs. Assumptions about how many and what kinds of field audits should take place vary greatly, although the overall assumption is that sampling process will be used. In a number of cases, PEFC certificates have been issued without any site visits, under the assumptions that performance in Europe will generally comply with the standards and that subsequent site visits will suffice to catch any noncompliance. Also open to definition is the scope of the forest area to be certified. The default model in the PEFC envisions the certification of regions (e.g., all the forests in a province), although some national programs also provide for certification of individual forestry units. Whatever the certified unit may be, it is expected to prepare and release an executive summary of assessment results, but otherwise retains full control of information produced by any assessment. Stakeholder consultations in the granting of specific certificates are not required. In all, the PEFC currently lists slightly over 44 million hectares of certified land.
3. **Accreditation.** The PEFC neither accredits certifiers nor sets requirements for their accreditation. Rather, it leaves this function largely to national programs, which are expected to provide for the accreditation of certifiers who are independent and competent. The term ‘accreditation body’ is defined by the PEFC so that it is likely to be an ISO affiliated body, but it could also conceivably be an organization concerned primarily with forestry.
4. **Labeling.** Use of the PEFC logo²⁴ is available to any FMO holding a valid PEFC certificate, provided it obtains an official license from the Council or a national governing body. Individual landowners who are part of a regional certification can receive licenses to use the logo provided they ‘fulfill the set requirements of regional/group certification.’ Different combinations of the logo and accompanying text can be used under different chain of custody conditions. Where all of the wood can be connected to certified forests based on physical segregation, products may carry the words “from sustainably managed forests.” Where at least 70% of the wood is allocable to certified forests based on inventory control systems, they may carry the words “promoting sustainable forest management.” The PEFC also has rules for providing off-product use of its logo.

²³ Austria, Belgium, Czech Republic, Finland, France, Germany, Latvia, Norway, Spain, Sweden, Switzerland, United Kingdom.

²⁴ The PEFC logo:



5. Administration. The PEFC system is a decentralized one, and a considerable amount of its administrative capacity seems to be based in previously existing organizations, some of which are not officially PEFC offices. The central office in Luxemburg is operated by a director and small staff. The national PEFC offices, however, are also gearing up, some having several professional staff members. Given the brief existence of the organization, these trends imply the continuing development of considerable organizational capacity.

COMMON PROGRAM CHALLENGES

Although the FSC and PEFC alliances appear to be engaged in a broad-scale competition with each other at present, and are not always on speaking terms, it is important to remember that they share a number of basic institutional features and face some common challenges. Accordingly, we close this introduction by noting a few key programmatic issues that seem to cut across the programs.

Consistency and Decentralization. Perhaps the most daunting challenge facing forest certification programs is to construct systems that can claim to be globally consistent and at the same time respond to local circumstances in very diverse places. The FSC and PEFC started on rather different ends of this challenge. The FSC began by defining a relatively strong set of program-wide requirements and then adapting them to the degree necessary to respond to local differences. The PEFC began by defining a much looser set of program-wide criteria and then building local programs. Over time, however, both programs have had to address the issue of achieving decentralized consistency. Thus the FSC is facing considerable pressure from some of its national and regional working groups not to try to make their respective standards so consistent with each other as to override decisions made in local standard setting processes. The PEFC, on the other hand, is facing increasing pressure to build greater credibility, which often means consistency, into its program.

Improving Reliability and Reducing Costs. Similarly, the competition between the alliances intensifies the pressures on each program to improve its performance. This often means deploying improved mechanisms for monitoring and assessing forestry operations, including more detailed and consistent assessment protocols, better accreditation and auditing systems, information management systems and the like. But all of these improvements cost money, and the programs are simultaneously under pressures to keep costs down, since they must be remunerated by the forestry operations they certify and are, after all, in competition with each other. These countervailing pressures create strong pressures for the programs to observe each other closely, and to adopt those innovations made by one program that can be turned to advantage by the other.

Expanding Scope and Preserving Strength. Third, each certification program is under constant pressure to improve its competitive position by expanding its scope while at the same time preserving its fundamental sources of strength. For the FSC, this currently means addressing issues such as how to deal with 100% recycled paper and whether to develop some sort of “step-wise” system to facilitate the entry of lower performing enterprises which

might then be induced to attain the higher standard over time. For the PEFC, it means things such as expanding to include tropical timber and trying to induce environmentally credible NGOs to get involved. These initiatives and many others pose considerable risks for the programs, since they may threaten the primary social and political supports on which the programs are founded.

CONCLUSION

The purpose of this book is not to predict the outcomes of the debates and conflicts surrounding forest certification. It is conceivable that the shared technical and social challenges of certification will drive continuing convergence among the programs, conceivably leading to the eventual emergence of a single standard and program. On the other hand, it is equally possible that the current competition will continue, making each program stronger and more comprehensive over time, but leaving the market for certified forest products divided among two recognizable options: (1) a high end certification program backed by environmental NGOs and (2) a mid-level certification program backed by responsible segments of the forest products industry (Atyi and Simula 2002). Either way, however, it is important to understand both the similarities and differences among programs. The programs share origins in societal dissatisfaction with preexisting forestry institutions, and their ramifications are likely to be both shared and cumulative as well.

The remaining chapters examine the many ways in which forest certification programs interact with a host of other social and political arrangements. These range from local institutions, such as community politics and decision making, to transnational ones, such as global governance. The chapters examine issues running from adaptive management and social learning to economic and political equality to community consultation and democratic participation to policymaking and legitimacy to non-governmental regulation and law making. We believe that the reader will come away with a powerful understanding that the big issues in forest certification are not so much inside the certification programs as they are in the relationships between certification programs and society.

November 2002

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CERTIFICATION IN THE FOREST POLITICAL LANDSCAPE

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1 CERTIFICATION - A NEW VEHICLE FOR SECURING PUBLIC BENEFITS FROM FORESTS

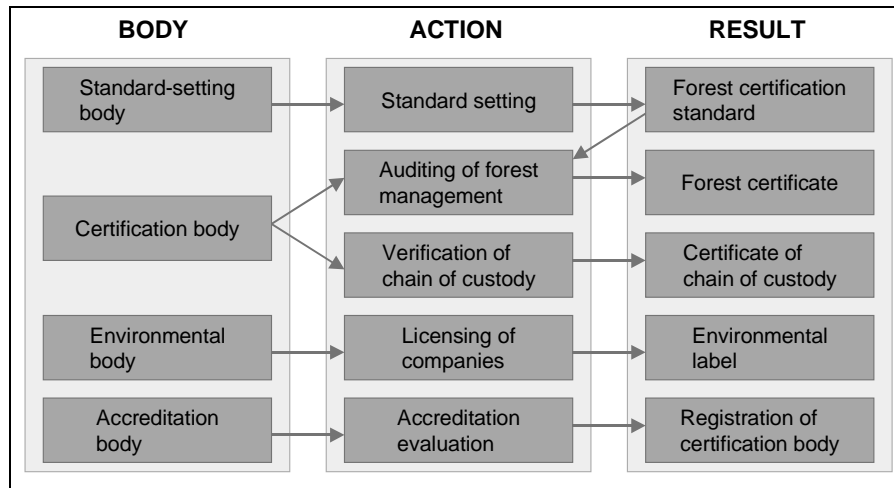
Forest certification is having a significant impact on the public affairs of forestry. In a break with the past, forest stakeholders now seem more concerned about certification than with the latest forestry regulations, or with initiatives from the United Nations. This paper examines the reasons why. We begin with a “helicopter” view of today’s forest political landscape:

- *There has been a breakdown of public trust in forest managers and enterprises:* People like forests; they have many emotional attachments to them. They also like forest products - and need increasing quantities of them. But they don’t like, don’t understand, and don’t trust what comes in between: forest management, which lies at the interface of public and private forest benefits.
- *Forest problems are on the increase:* Poor controls on forest use, and a lack of policy and market incentives for sustainability, have meant that asset-stripping approaches are profitable, especially in the South. There is consequent deforestation, reduction of forest quality, and marginalisation of forest-dependent poor groups. Public forest services (biodiversity, watersheds, etc.) suffer in favour of private goods (timber, food, etc.). Many of the underlying causes are outside the sector (trade rules, debt, corruption, etc.).
- *Forest producers are under intense pressure to change:* In the North, many forest products - especially paper and tropical hardwoods - have become symbols of forest destruction and waste. Forest industries are facing increasing pressure from NGOs and governments - and occasional consumer action - to clean up their act, but they still tend to be site/asset-focused rather than stakeholder-focused. Market information is very poor. Producer/industry associations are weak, and non-existent on the international scene.

Forest management certification was introduced into this political landscape to serve two basic purposes: to improve forest management - and particularly the multiple public benefits

- through market-based incentives; and to improve market access and share for the products of such management. Although there were useful precedents from other sectors that helped to structure the mechanics of forest certification (Figure 1), there was no real experience of forest certification prior to 1990.

Figure 1: Elements of Market Oriented Forest Certification



Source: Bass and Simula 1999.

Thus it could be said that the proponents of certification launched it on a sea of assumptions, i.e. that:

- Voluntary, market-based certification would be a cost-effective complement to traditional administrative regulation in achieving sustainable forest management (SFM)
- Consumer demand for certified products would be adequate to cover the costs of both improved management and certification
- By involving consumers, producers and other forest stakeholders in standards development, certification would be more credible than traditional instruments
- Poor management and deforestation would also be amenable to the incentive effects of market-based certification, as would good management
- By not involving government, certification would be able to avoid charges of trade discrimination, and would not be constrained by non-progressive notions of forestry within the government system
- One set of standards could be broadly applicable and acceptable to all types of forest producer, with some local interpretation

- Western, scientific principles of forest management apply everywhere and would be appropriate for certification standards

Table 1: Multiple expectations of forest certification

Stakeholder	Interest	Aspects of certification used to pursue interest
Forest companies	<ul style="list-style-type: none"> - Market access - Price premium - Price and market stability - Social "licence to operate" - Secure tenure/concession - Policy recognition/influence - Shareholder/staff confidence - Efficiency, capacity strengthening 	<ul style="list-style-type: none"> - Label, buyers groups - Label, competition among buyers - Buyers groups - Certificate, consultation in audit - Certificate - Certificate, working group - Certificate, audit process - Audit process
ENGOS	<ul style="list-style-type: none"> - Improved forest management - Rewarding good producers and shutting out bad producers - Influencing consumers - Influencing policy and institutional development 	<ul style="list-style-type: none"> - Standards, audit, and accreditation processes - Label; buyers groups; raising level of standards to restrict numbers - Label; buyers groups - Standard development process; working groups; FSC global status
Government	<ul style="list-style-type: none"> - Stakeholder agreement on SFM - Improved forest management and capacities - Reduced enforcement and monitoring costs 	<ul style="list-style-type: none"> - Standard/working group process - Standards, audit, and accreditation processes - Audit process; forest and chain of custody certificates
Consumers	<ul style="list-style-type: none"> - Choose wood products based on origin/production processes 	<ul style="list-style-type: none"> - Label and all processes that produce it; buyer competition

NB This analysis is generic and illustrative. IIED's work has examined specific stakeholders' interests and assessed how far certification was an effective means to pursue those interests.

Opponents of certification also made various assumptions, i.e. that:

- Rational forest management would be impossible in many tropical forests
- Timber markets would be incapable of turning against agents of forest destruction and supporting responsible stewardship
- Producers would be unwilling to bear the extra costs of certification
- It is not legitimate for non-governmental groups to define standards for forestry
- Certification would act as an unfair trade barrier

As forest certification evolved during the 1990s, through its many (experimental) applications, specific stakeholders found that certification - or some elements of the wider certification/standards/"green marketing" processes - could help them meet their own particular interests. Table 1 illustrates the particular aspects of certification that stakeholders have attempted to use to pursue their interests.

2 REVIEWING THE ASSUMPTIONS AND IMPACTS OF CERTIFICATION - THE IIED STUDY

In just a decade, certification has come to dominate many forest agendas - with extensive policy discussion, investment of time and resources, and the development of dozens of schemes - if not yet huge areas of forest covered. But there are still clashing views on such questions as:

- *Which groups will really improve their forest management through certification?*
- *Will it tackle the most pressing forest problems, or merely reward a few responsible producers?*
- *Who will be the winners and losers?*

Any answers being proffered today tend to be speculative. There has not been much assessment of the early impacts of certification on forests and on the interests of stakeholders. Nor is there any baseline against which to track certification's impact in future. With so many assumptions and expectations, and now the beginnings of a body of experience, IIED considered that it was timely to assess the impacts - and thus to explore a mature role for certification.

Consequently, from 1999 to 2001, IIED conducted a series of studies with the aim of "assessing the actual and potential impacts of certification, in order that stakeholders, and especially those in developing countries, can improve their decisions about if, and how, to develop, apply and monitor certification as one instrument for encouraging SFM and sustainable markets" (Bass et al. 2001, forthcoming). IIED's activities included:¹

- The development, with FSC, of a database of all 156 certificates in 1999. This covered enterprise and forest type, forest products, forest area, country, and the conditions attached to the certificate (by FSC P&C)
- Analysis of this database to reveal trends and to help in identifying case studies (below)
- Field case studies of the practice and impacts of community forest certification, most of them led by Matthew Markopoulos of the Oxford Forestry Institute (OFI):
 1. Lomerío Community Forest Management Project, Bolivia
 2. *Campesino* Forestry Groups, Honduras
 3. Union of Zapotec and Chinantec Forestry Communities, Mexico
 4. Bainings Ecoforestry Project, Papua New Guinea

¹ The work focused on FSC certification, as it has the longer history. It also stressed small producers and poorer developing countries, in accordance with IIED's mission and that of the financial supporters, DFID and the European Commission.

5. Muzama Craft Limited, Zambia

- Field assessments of the interactions of supply chains and certification in three countries which produce products competing in the UK market, Poland, Brazil and South Africa, together with structured interviews with companies at different stages of these supply chains
- Assessment of the policy impacts and implications of certification through literature review and interaction with the five country teams taking part in IIED's major programme, *Instruments for sustainable private sector forestry*
- Interviews with *key informants* to enrich the above and to gain insights on future options for certification
- Preparation of a *synthesis* report, bringing together the above findings. This will be published in July 2001 (Bass et al. 2001, forthcoming). The current paper is drawn largely from that work.

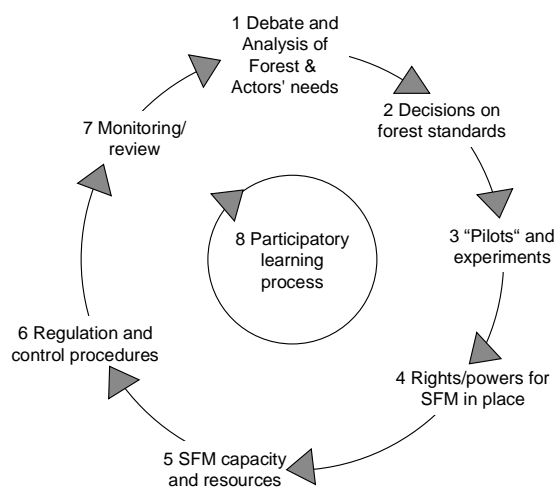
3 EARLY EVIDENCE OF CERTIFICATION'S CONTRIBUTIONS TO POLICY CHANGE

There are recent - and often quite exciting - signs that certification has been helping to change forest policy towards SFM, although a lot of the evidence tends to be anecdotal (Mayers and Bass 1999; Elliott 2000; Elliott 1996 and Taylor et al. 1999). To separate out the policy impacts of certification from other possible influences is a treacherous task in an academic sense. But the strong belief, amongst those interviewed, in the significance of certification's role and reach in their local context does offer some confidence.

Reviewing a broad range of developments in many countries, Mayers and Bass have demonstrated how many recent advances in sustainable forestry have derived from multi-stakeholder processes that bring together the functions of debate, decision-making, experiment and review in favour of a continuous improvement approach (Mayers and Bass 1999).²

This approach is illustrated in Figure 2. In the following we employ the eight components of this model to examine certification's emerging contributions to policy processes and to policy contents.

² In contrast, "traditional" models of policy formulation have tended to favour the concerns of central government institutions, their immediate advisors, and powerful political and business forces, which often operate through non-transparent means. Other stakeholders - especially politically- and economically weak but forest-dependent groups - are often marginalised from the forest process.

Figure 2: A participatory, continuous improvement approach to forest policy

Source: adapted from Mayers and Bass 1999.

Policy Component 1. Improving debate and analysis of forests' needs and actors' needs:

RAMETSTEINER (2000) observes that certification's biggest role in policy change has been to heighten general awareness of SFM and of the roles of other stakeholders. This awareness seems to derive more from the multi-stakeholder processes of developing standards, than from the cumulative impacts of individual certificates.

FSC has developed international multi-stakeholder working groups to develop and review its principles and criteria (P&C), as well as tricky issues as they arise. FSC encourages national and regional certification working groups, to transform the global P&C into national standards (and similar national working groups are attached to the non-FSC country-driven schemes). These global, regional and local groups have provided multi-stakeholder forestry fora in places where such facilities did not exist, or they have offered alternatives where fora were dominated by e.g. government. Their work has highlighted many issues and needs beyond those specific to certification. These groups may well influence the new generation of national forest programmes (nfps) that are seeking multi-stakeholder input - but for which there is little precedent.

Forest policy seems to have been influenced most where governments have had some involvement in the process (although government officials can only be observers in FSC processes). However, where government has been very centrally involved - as in the Malaysian, Ghanaian and Indonesian schemes - it is possible that certification is viewed merely as a means to implement existing policy, rather than to challenge and improve it. In

contrast, where there has been no government involvement at all, the policy impact may not be as good, as was the case in Zambia where the forest authorities have not fully understood certification and have (perhaps inadvertently) created obstacles to certified operations.

The presence of in-country certifiers appears to have strengthened the policy impacts of national groups, by providing professional inputs and evidence from field experience of certification e.g. Imaflora in Brazil and CCMSS in Mexico (Dawn Robinson, FSC, personal communication, 2001).

Policy Component 2. Improving decisions on forest standards:

Certification (and FSC in particular) has helped to clarify, systematise and apply precise forest management standards for real production and trade contexts. Some national certification processes have been able to use existing national sets of criteria and indicators for SFM (such as PEFC did with the Helsinki C&I, CSA did with the Canadian Council of Ministers' interpretation of the Montreal C&I, and the Malaysian National Timber Certification Council has done with ITTO's C&I). They have applied national-level criteria to the field level. This has helped to bridge a gap between policy and practice. The process now under way to develop South African national principles, criteria, indicators and standards of sustainable forest management was in large part triggered by both South Africa's early experiences of certification, and by the national forest action plan.

Policy Component 3. Pilots and experiments in SFM:

Nearly 20 per cent of FSC certificates are held by government agencies. Certification has, for many agencies, offered an opportunity to prove that they have operationalised policy - adding impetus and credibility to their task of tightening up regulations for private forests. Where the audit process helped government foresters through a learning process on their own land, this can have a broader influence on policy review. The first certifications of State forests in Poland, for example, were carried out when a new forest policy was being drafted. Certification helped the Forestry Department to develop a framework for the new policy.

Certification has also provided a "demonstration effect" on non-government land - but it has been limited. High levels of external support skewed the demonstration effect in community forest enterprises. In Bolivia, Zambia and Papua New Guinea, NGOs and donors supported certification as a way of promoting small-scale forestry: but the demonstration effect was minimal, as other forest enterprises realised that they do not have access to the same resources and markets as the supported enterprises. In Zambia, other enterprises were watchful of the example of Muzama's certification, but could not take certification seriously knowing that Muzama has had years of donor investment before being able to get certified (and even now requires more support in order to use the certificate in the market). Established companies, with limited external support, have greater potential to be useful models, as they are more likely to be seen as normal companies: this was observed with Gethal in Brazil.

Because certification has readily identified those forest enterprises that have generally been practicing good forestry for some time, a potential typology of certified "models" could be identified and promoted for different forest types, producers or countries.

Policy Component 4. Renegotiating rights, responsibilities and powers:

Certification has occasionally helped stakeholders to recognise the need for a new distribution of roles between government, communities and the private sector. At the field level, audit processes have publicised and demonstrated claims to forest, often of marginalized groups, and have called for improved relationships as conditions to certificates. These have often improved the basis of equity in local forestry.

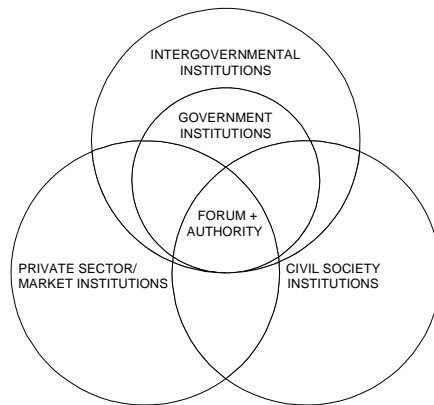
At the policy and market levels, the various processes of certification have also offered other means for increasing the frequency of contacts, spreading awareness, and changing the basis of trust amongst stakeholders. Whilst many community groups had hoped that certification would result in their being accorded more rights and responsibilities, in the cases studied certification was not the sole factor in any such positive developments. The Lomerío enterprise in Bolivia found that the international publicity generated by certification did increase awareness of indigenous peoples issues in general, and its land and resource claims in particular; but other political changes gave a more direct result in terms of securing land claims.

Certification has accorded considerable power to a new forest stakeholder - the independent certifier and inspector. The emergence of these players presents new potentials for SFM, which have yet to be thought through, e.g. of mediation, arbitration and ombudsman. It has also resulted in the privatisation of some regulatory functions (Policy Component 6).

Finally, it is significant that a *voluntary* initiative, with what first appeared to forest managers to be a frighteningly comprehensive agenda, can begin to extend that agenda to other stakeholders - including the government - and potentially lead to mutual role changes. This has been noted in the certification processes in Canada, the UK, Indonesia and Ghana.

Sustainable development policy processes, sustainable forest management, and marketing that is fair to both producer and consumer, will all require stakeholders to work more closely together than in the past. Even if a "level playing field" is an unrealistic and elusive goal, some notion of all stakeholders finding a place in the broader institution of SFM might still be helpful. Figure 3 offers a cartoon of this: it is suggested that certification is one instrument that is helping the "SFM meta-institution" to form, defining its objectives, rewards and attempting to include many players.

Figure 3: The SFM “institution”



Policy Component 5. Developing SFM capacities and resources:

For *community enterprises*, a frequent outcome of certification has been improved administration and governance. This has developed areas such as bookkeeping, reporting, the structure of management and relations with community and government authorities. In most of the cases studied, particularly Bolivia and PNG, the enterprise has had to improve its procedures for planning and documenting forest operations. However, capacity development in the community enterprises studied has also been skewed by:

- Corrective action requests that necessitate action by outsiders rather than using local capacity and techniques
- Emphasising export markets before the enterprise had developed capacities to handle domestic markets
- Donors subsidising the certification process, which meant that the community's opportunity costs for certification were low (thus affecting the choices made for capacity development)

But the capacity benefits of certification in community enterprises are less significant than the capacity *lacunae* that limit communities' ability to undertake certification. A number of certifiers, notably SmartWood and Woodmark, consider capacity building to be an increasingly important complement to their certification work.

For those *corporations* interviewed, which have been certified to both FSC and ISO standards, FSC certification was considered to have brought fewer capacity-building benefits than ISO 14000. ISO 14000 has helped corporations to get their management systems together prior to FSC certification. Most large companies then start FSC certification by getting one area or one division certified first and using that experience to inform further certification. Many large companies, including Klabin and AssiDoman, told IIED that they

undertook certification in part because it was quite evident that their current practice already matched most of FSC's P&C. However, FSC certification has also helped to improve management capacity:

- Streamlining management system procedures and filling gaps
- Developing staff skills, through both certification-related training, and through auditors, acting as a useful bouncing board for staff on forest practices
- Improving the company's status and ability to deal with other stakeholders -helping them to make their businesses stakeholder-focused instead of just asset-focused
- Positively influencing cost-effectiveness all-round, e.g. in stock control and occupational health and safety

But certified corporations already had reasonable capacities in place and were practising good forestry. Certificate conditions seem to emphasise systems and administration of management more than technical practices on the ground. For industrial forestry operations:

- The most frequent conditions required precautionary or mitigating measures for reducing *environmental impacts* - specifically assessments, safeguards, set-aside of sample areas, and written guidelines (FSC P&C numbers 6.1, 6.2, 6.4 and 6.5)
- The next most common conditions required improvements to the *management/monitoring system* - specifically to training and supervision to implement management plans (7.3) and research and data collection to assist monitoring and assessment (8.2)³

Policy Component 6. Improving regulations and control procedures:

Forest certification has hybrid characteristics that mean it should be considered alongside regulatory approaches. Its use of standards is more typical of administrative regulation. Its environmental objectives are determined not by a central authority, as they would be for "pure" market-based instruments, but by public consultation (Markopoulos 2000). Such consultation is a common feature of administrative decision-making on a wide range of environmental issues (Beierle 1998).

Certification can therefore complement or strengthen forest law enforcement. Certification standards require compliance with applicable laws as the first step towards certification, e.g. FSC's Principle 1. Audit processes can thus stimulate compliance. The widespread uptake of certification may, therefore, serve to strengthen law enforcement. This has particular appeal to governments and civil society groups in countries where illegal activities in forests are widespread, and who want to reduce illegality (as is under consideration in the Mekong Basin). But the effectiveness of certification as a law enforcement tool is limited by the voluntary nature of most certification schemes: certification can only induce producers - not force them - into complying with legislation,

³ Although certification records show the conditions associated with certificates, they do not show the changes that were associated with audits prior to certification. Hence the records may underestimate the possible impact on capacity development and forest management.

and an economic incentive is required. This means that it is unlikely to have much impact on those companies whose business models are based on evading the law.

Some countries are considering making certification itself a legal requirement, as in Russia, although this leaves certification vulnerable to all of the problems traditionally associated with regulation, such as corruption and inflexibility to changing needs (Markopoulos 2000).

In the UK and Indonesia, the authorities are employing certification as a complement to law enforcement - an effective mechanism for self-regulation. This may also encourage the forest authorities to exempt certified operations from certain administrative procedures. In Indonesia, with LEI's "stepwise" approach to certification, increasing numbers of exemptions will be available to those enterprises that are certified to higher thresholds. In Bolivia, the Forest Law of 1996 allows for independent, third party certification to replace statutory audits of compliance with national management standards in forest concessions. In South Africa, certification against national standards is now mandatory within two years of commencement of a forest management lease on government land. And in Guatemala, FSC certification within three years is a condition of concessions in the Mayan Biosphere Reserve (Dawn Robinson, FSC, personal communication, 2001).

Similarly, "privatised" chain of custody verification mechanisms are emerging in countries such as Cameroon, PNG and Ghana, to enforce the implementation of forest management legislation, timber transport rules and/or revenue capture.

Policy Component 7. Improving monitoring and review procedures:

In South Africa, certification is now a substitute for direct government monitoring of compliance with lease conditions. Similar possibilities are being developed in e.g. Bolivia and Indonesia. But the real potential of certification is not just of improved monitoring of individual (certified) forests, but the cumulative database which could be developed of all certified forests in a country, region or globally. FAO is now beginning to bring forward global figures of certified forests. But nations are not yet making use of the rich information available in certificates in terms of profiling the types and extent of good practice.

Policy Component 8. A participatory, learning process to drive change towards SFM:

As we have seen above, certification has contributed to both the processes of policy development and to the content of policy. Mayers and Bass (1999) observed that "policy that works" is driven by *participatory learning processes* - at the "heart" of Figure 2. There are several ways in which certification appears to have contributed to such processes:

- *Raising awareness* of the possibilities for sustainable forest management, how to recognise it, how to measure it, and who should be responsible; through the many certification conferences, meetings and media articles
- *Decentralising and democratising the policy processes*, through national working group agreements on certification standards and procedures; through raising the profile of some previously marginalized stakeholders; and through forging new relationships between stakeholders in the certification and audit processes

- *Improving interdisciplinary sharing* of ideas and loosening of professional cliques, through all of the above
- *Promoting the principles of good governance*: notably transparency, accountability, representation, and compatibility with cultural norms⁴

These contributions tend to be greater where there have been organised national processes for participatory standards development.

Indeed, there has been a premium on *participation* in the development of certification. It will be noted that those who decry particular certification schemes do so largely on the basis of who participated in them and who did not (e.g. WWF 2001). But general development experience reveals that, where the quality of information flows and transparency are good, there tend to be fewer demands for participation. Where stakeholders have greater experience of an issue, overt demands for participation again tend to be lower. Thus *learning* is also important (Mayers and Bass 1999).

An obvious need is learning about the actual impacts of certification and associated standards, in order to review assumptions and risks associated with certification and to improve. This paper introduces some findings, which will be elaborated in Bass et al. (2001). It also suggests a framework for continued impact assessment of certification. It is hoped that national working groups will take on board this learning function with the same zeal as participation.

Limits to certification as a national policy instrument:

Whilst some policy impacts can begin to be observed as illustrated above, we are not yet convinced of certification's universal utility as a *national* policy instrument. This is for several reasons:

- Effective policy processes build on elements that work in a country's cultural and institutional context. It cannot be assumed, on the basis of our early observations in *some* countries, that certification can play the same role in *any* country
- Many of the contributions of certification remain tentative and unproven outside narrow market contexts
- Some of the contributions to date have been of a one-off nature rather than offering a continuing policy process
- Although certification may be able to *encourage* a continuous-improvement approach to policy, it takes government commitment and broader institutional change to *adopt* such an approach
- Finally, certification can be costly compared to many alternative instruments. This should be recognized so that certification is not employed for too many functions, policy-related or otherwise (Bass and Simula 1999)

⁴ It may be interesting to reflect on the extent to which the division of FSC's governance structure into separate economic, social and environmental chambers and North/South sub-chambers - in attempts to cater for individual needs - ends up downplaying the shared needs of SFM.

Promising approaches at the international level:

However, certification would seem to be a beacon for new approaches to *international* policy and (environmental) law. International organisations such as FAO and ITTO have moved from early positions of suspicion about certification (as a potential non-tariff barrier to trade, and as diverting attention from government-led forestry improvements), to actively tracking progress in certification (the annual ITTO updates being particularly useful), to acceptance of FSC, and of certification as one amongst many instruments for SFM.

Many policy discussions in international fora appear to have been concerned as much about the appearance of FSC as a new form of international democratic governance as about certification itself. As FSC was essentially a quick, international, centralised solution to forest problems, it continues to attract criticism of its authority, mandate and means for stakeholder representation: FSC's rapid success has unsettled some groups, notably some industry players, small producers and government bodies. They criticise the "self-appointed" nature of FSC; the ability of ENGOs to be very active in FSC governance and in critiquing individual certificates; the continuing lack of recognition of non-FSC "bottom-up" local standards; and the fact that FSC maintains both the global standard and a global accreditation system.⁵

Yet it has not gone unnoticed that FSC's P&C offer a kind of "soft" global forest convention, paid for through a multitude of market relationships. A formal forest convention has, of course, been elusive intergovernmental processes; it would have depended on government-to-government compensation for restricting forest use, for which there is no willingness to pay (Mayers and Bass 1999). Indeed, FSC's mode of operating is a model influencing the form and conduct of the new UN Forum on Forests. FSC has also had a policy influence in non-forest sectors, notably fisheries, dam construction, tourism and (in progress) mining.

4 IMPROVING STAKEHOLDER RELATIONS - THREE MAJOR CHALLENGES FOR CERTIFICATION

Figure 3 illustrated the concept of a "meta institution" of SFM for the 21st century, in which government, civil society and market players work together to develop mutually useful roles. It was further suggested that certification is helping such a concept to become a reality, both globally and locally. It is certainly philosophically compatible with this. There are three institutional issues concerning certification that currently drive stakeholders *apart*, rather than together. These are:

- *Stakeholder equity*, and specifically the easier access of more powerful producers and buyers to certification and its benefits; compared to smaller groups
- The *proliferation* of certification schemes

⁵ This Council might be contrasted with the International Federation of Organic Agricultural Movements - which evolved in a bottom-up way, but took decades to develop.

- The rather weak *integration* of certification with other instruments for SFM - certification is still at the stage of being treated as an add-on “magic bullet”

More work is needed on these challenges (and we will introduce the potential application of new institutional economics in closing this paper). In the mean time, preliminary observations on these three issues follow:

Equity dilemmas: the predominance of Northern and/or industrial producers and retailers⁶

Certification has brought about many *equity benefits*, notably through bringing a wider range of stakeholder interests together in standard setting, policy definition, and forest planning. It has also attempted to ensure equitable outcomes of forest management, by assessing the impacts on vulnerable social groups through the certification process. And it has promoted corporate social responsibility by stressing that good forest management must incorporate social concerns to be viable.

But *Northern countries* dominate the current set of FSC certificates (84 per cent of the certified area is in Europe and North America). So also do large-scale industrial operations worldwide, under corporate or state ownership (85 per cent of the area). And temperate and boreal forests similarly dominate (83 per cent of the area). In addition, the certification schemes in Canada and Europe are rapidly catching up with FSC’s certified area, and indeed PEFC is overtaking it.

This progression is illustrated in Figure 4. At present, much of the innovation, debate, and emotion are invested in competition between those producers who are just above, or just below, the threshold of acceptable forest management, as defined by FSC in particular. Consequently, much of the expense associated with certification is being incurred in bringing those (currently fairly good) operations from just below certification’s thresholds up to the higher standards required (Kanowski et al. 2000).

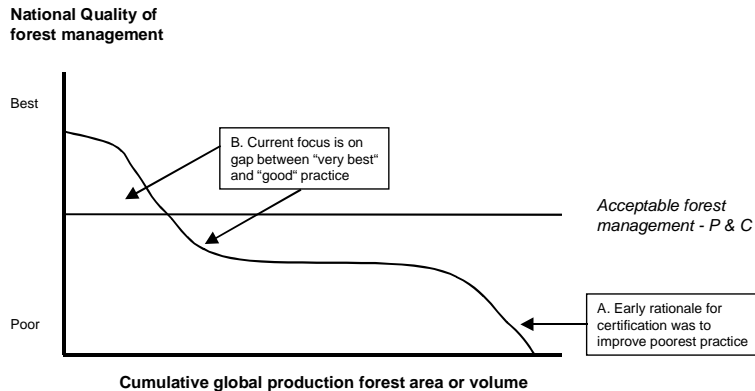
However, there are many producers operating well below this threshold who have neither means nor incentives to consider improvement. This obviously includes those “asset-strippers” whose business models face different incentives. But it also includes a majority of producers in many developing countries with no access to skills, equipment, resources or information. Hence the concept of producers’ groups to assist the necessary capacity development, which WWF is now working on. None the less, If certification is to cover a significant proportion of the global area that will be producing industrial wood for needs over the next 20-30 years - reckoned to be about 600 M ha (WWF 2001) - a single threshold, defined by a very demanding global standard, may not help many developing countries.

This brings us to the issue of the relevance of certification standards to different forest types and producers. Some system is required for “reaching down” to those producers who practice poorer forest management - even, perhaps, including the asset-stripping loggers. This would be a matter of both defining *stepwise standards* at different levels, and creating

⁶ See Thornber et al. 1999 for a full treatment of equity concerns. Here we concentrate on the relative power of Northern producers and buyers.

incentives to progressively “ratchet up” producers from lower levels to higher levels. This has been discussed in Indonesia under the Lembaga Ekolabel Indonesia certification scheme: tax concessions and exemptions from administrative requirements can also be offered for concessionaires meeting progressively higher levels of standards. This is all consistent with the principle of continual improvement, which is embedded in certification schemes. However, the marginal costs of certification might be expected to rise as attention turns, necessarily, from the “good” operators, to the “fair” operators and ultimately the “poor” operators. At some stage, this marginal cost may exceed both public and private benefits.

Figure 4: Illustration of how certification has developed



NB The curve is illustrative only, as there is little empirical basis on which to construct a precise one. Adapted from Kanowski, Sinclair, Freeman and Bass 2000.

The predominance of Northern buyers - especially through organised buyers' groups - has driven certification. But there is concern that this has also resulted in a concentration of the market benefits of certification towards the retail end of the supply chain. Certainly, buyers are unwilling to pay a premium for certified timber, and small producers do not receive higher prices for their upfront investment in certification. In the absence of good information on how much retailers are investing in advertising certified material, it is difficult to ascertain whether they are intent on capturing the potential value added of certification from consumers. Little investment in customer awareness raising is evident. This, along with the fact that they are rarely paying a premium to producers, would make it appear that retailers are seeking to control demand in certified products, risk management and reputation assurance perhaps forming the retailers' main motivation. This raises the obvious question: is a cartel emerging? Ways of cost- and benefit-sharing need to be developed, perhaps through the Forest and Trade Networks.

FSC has demonstrated its commitment to improving equity by: changing its structure to allow a better balance of influence and interests; writing non-discrimination and flexibility

of standards for local conditions into its statutes; developing new guidelines for regional standards; developing group certification and resource manager certification schemes; offering support from the board to social chamber meetings and working with the social working group on fund-raising; and addressing considerations for small enterprises and involving governments.

The emergence of *national certification schemes* in Europe, specifically catering for small-scale private forest ownership, and the development of national schemes in the tropical countries, are further examples of responses to equity concerns.⁷

Certifiers are making increasing efforts to make information better available, to use local auditors and to reduce costs for smaller enterprises where possible.

What more can be done? To maintain their own credibility, certification schemes and certifiers should continue to identify and prioritize equity concerns as they arise, and avoid the temptation to focus only on the large producers and easy markets which in the long run, would call the credibility of certification into question. This should include:

- Deliberate attention to north-south and big-small producer - imbalances and inequities. Better understanding, and sometimes affirmative action, by buyers would also help
- Assessment of the potential for systems of step-by-step improvement, to allow poor producers to work towards becoming good producers rather than sidestepping certification altogether
- Development of an approach to the question: which stakeholders count most? Here, the work of Colfer (1995, 1998) is promising, using criteria such as proximity to forests, dependence on forests, pre-existing rights to forests, knowledge of SFM, and the inverse of their power

Where there are equity concerns, especially in developing countries, the intervention of *government and development assistance* may be justified. They can help by supporting the equity-producing components of certification, notably:

- Boosting stakeholder participation, both in national working groups and in the governance of international schemes
- Improving information provision and sharing, on both certification and markets
- Building capacities for SFM and for making informed decisions about certification
- Further developing group certification
- Small business and marketing development
- Promoting the development of certifier organisations and assessors in the South
- Assessing the differential impacts of certification

⁷ Whether these national schemes deliberately aim to improve equity - or alternatively whether they aim to set up schemes suitable to certain local actors because they do not like FSC's approach to equity - remains open for discussion.

Proliferation of certification schemes: a threat or a boost to SFM institution building?

In the history of forestry, the 1990s will surely be known as the period when forest stakeholders worked hard to define, or to prescribe, SFM (Bass 1997). On the one hand, we now have widely accepted forest management standards, such as FSC's, and widely accepted procedures for assessing those standards, such as those of ISO. These advances are integral to many of the certification schemes today. On the other hand, "widely-accepted" is not the same as "universally accepted". Even if schemes are very close in standards and procedures, for some stakeholders, the differences will be more significant than the similarities. The proliferation of certification schemes has become perhaps the biggest contemporary issue affecting forest certification.⁸

With the emergence of the Pan-European Forest Certification (PEFC) scheme and over two dozen national forest certification schemes, any notion of the *de facto* predominance of FSC is no longer tenable - especially with the rapid rise in area certified under PEFC. In terms of certification's dual forest and market goals, this proliferation is both an opportunity and a threat:

- *An opportunity:* Certification schemes can evolve to more precisely fit local conditions or producer types. Policy targets or commercial targets for certification might be more easily met by a greater number of schemes. A degree of competition between schemes can encourage improvements in efficiency and effectiveness, and thus bring down costs. A larger body of experience can be built up under different approaches - if mechanisms for sharing information and experiences were in place, which they are not at present
- *A threat:* Proliferation may lead to consumer confusion and hence a loss of credibility of certification, affecting all schemes. Proliferation can also lead to a reluctance of firms to be certified at all, if they require different certificates for different markets (with the costly different data sets, monitoring frameworks and audits that would be required), or if they perceive that any one scheme has an insecure future. This could also result in a "race to the bottom" - reducing standards to attract producers to support an individual scheme. Finally, national schemes of smaller countries would face huge costs to promote their schemes unilaterally in an increasingly crowded field

In response to proliferation, buyers and consumer groups have expressed the desire for one label. Many in the wood products industry are aware of both the opportunities and threats of proliferation and talk in terms of allowing proliferation (to suit their needs) but mitigating the problems (to reduce their risks) through "mutual recognition" between schemes. Governments, too, have been investigating mutual recognition to secure a level playing field for trade: Australia and Canada have been particularly active.

⁸ Perhaps it has revealed, or accentuated, stakeholders' real intentions behind certification!

Many organisations have now established their own set of critical elements for comparability and equivalence.⁹ Analysing ten such sets, and assessing them against the needs of SFM, the market place and the mechanics of the certification process, Kanowski et al. (2000) have recently proposed critical elements by which to assess certification schemes (see 1.1 in the Annex).

On balance, the proliferation of certification schemes is driving stakeholders apart. But it must also be remembered that, earlier on, the very idea of certification split stakeholders in two groups. This split was mended by better information and learning. Similarly, trustworthy and widely-available information on the various schemes, such as the Confederation of European Paper Industries has seen fit to offer (CEPI 2000), will be required to solve the proliferation dilemma.

A maturing role: integrating certification into the set of SFM instruments

Because of the intimate linkage of certification with policy, law and capacities, it is necessary to assess and plan certification in the context of political and institutional dynamics. Figure 5 sets out an illustrative “pyramid” of elements that are needed at the national level for SFM (Mayers and Bass 2000). This is purely illustrative, but shows that there are some foundations (tiers 1 to 6 in the Figure) that are required to help certification function well. However, certification may be possible to some extent without them and may help to strengthen them (as the asterisks in Figure 5 indicate).

Those who are working to establish the “basic” tiers of the pyramid - of adequate policies and institutions - such as government agencies and the World Bank, have tried to create the conditions (“push”) for SFM. Those working on the more “sophisticated” steps like certification, such as WWF, other NGOs, and buyers have generated a demand “pull” for SFM. It can be useful for all parties to see their efforts in the context of one framework.

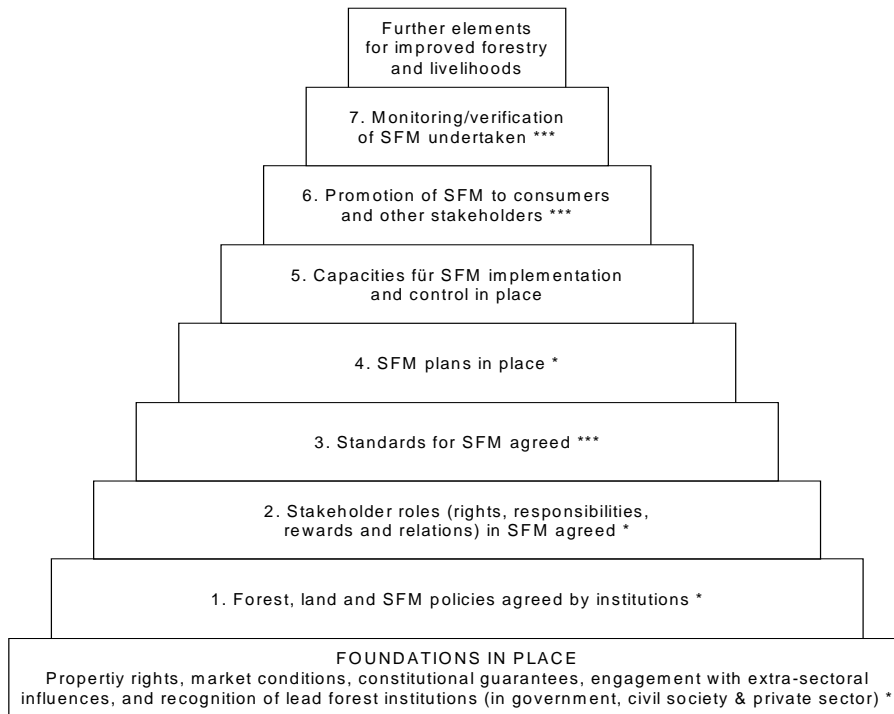
Thus we recommend further work, building on the findings and frameworks suggested in this paper and elaborated in Bass et al. (2001):

- *National certification working groups*, which have proven so valuable not only in certification, but also in policy development, should be encouraged to keep an oversight of the development of the “pyramid” of policy and institutional elements of SFM at national level, and promote improvements
- There is a need for compatible *frameworks for monitoring all certification schemes’* development, application and impacts - through self-assessment, stakeholder-led assessment, and/or independent means (a preliminary suggestion is made in the Annex, building on the methods IIED used for its impact assessment)
- *New Institutional Economics*, which deals with asymmetry of information and transaction costs, offers potential to explore ways to address the problems of equity and proliferation

⁹ These include governments and inter-governmental organisations, forest industry councils, forest product buyers and sellers, environmental non-government organisations, and some organisations that comprise representatives from some or all these groups.

Such work will help to find mature, focused and integrated certification to benefit forests, stakeholders and markets.

Figure 5: An illustrative “pyramid” of elements of SFM at national level



* to *** indicates the degree to which certification could potentially contribute to each “tier” Source: Mayers and Bass 2000.

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ANNEX

FRAMEWORKS FOR MONITORING CERTIFICATION'S DEVELOPMENT AND IMPACTS

1 MONITORING CERTIFICATION SCHEMES

Provisions to meet the critical requirements of certification schemes:

- Accordance
- Access
- Participation
- Accreditation
- Transparency
- Independence
- Consistency
- Continuous improvement

Source: Kanowski et al. 2000

Assessment to be informed by questions covering effectiveness, efficiency, equity and credibility. Baseline assessment required, then reporting changes/innovations to the above.

Changing uses of certification:

- Market-oriented certification
- Regulation-oriented verification
- Project- or institutional-oriented certification

Covers basic classification of uses to which scheme has been put, and provisions for it. Draws on information from 2-4 below.

Who could do it?

- Certification bodies self-assessment
- Regular use of accreditation procedures to obtain same information
- Possible use of a mutual recognition facility
- Facility for stakeholders to feed observations in

2 MONITORING CERTIFICATION AT THE FOREST LEVEL

Where certification is being applied

Build a database, with the following for each certificate:

- Name of forest, country, contact details
- Certificate number, certifier, date and date of expiry
- Area certified and location
- Biome and forest type
- Tenure type
- Annual allowable cut
- Chain-of-custody information - what's happening to the produce?
- Conditions/CARs with date, by FSC P&C category - listing the P&C numbers (ideally also a list of required actions as in Box A1 of Annex A)

Who could do it?

Assessors provide summary information for individual certificates. Certification bodies then enter all such summaries onto certifier database. Database to be structured so that cumulative information from certificates can be subject to database inquiry on meaningful factors (FSC database constructed under the IIED project provides an early model)

Forest/stakeholder impacts of certification

- Stratified sample of certificates assessed for changes over time (in effectiveness, efficiency and equity)
- Correlation with analysis of above database over time

Who could do it?

- Stakeholder self-reporting
- Independent field researchers

3 MONITORING AT THE CONSUMPTION/RETAIL LEVEL

- Types and volumes of certified products
- Sources of certified products
- Trends in relation to non-certified sources

Perhaps including some stratified samples that assess the supply chains of 2.2

Who could do it?

- Forest and Trade Networks/buyers groups and consumer groups
- Independent researchers for stratified samples

4 MONITORING AT THE NATIONAL/REGIONAL POLICY LEVEL

The role of certification in the notional SFM 'policy cycle' could be summarized:

1. Improving debate and analysis of forests' needs and actors' needs
2. Improving decisions on forest standards
3. Pilots and experiments in SFM
4. Renegotiating rights, responsibilities and powers
5. Developing SFM capacities and resources
6. Improving regulations and control procedures
7. Improving monitoring and review procedures
8. A participatory, learning process to drive change towards SFM

Recent innovations, clashes, constraints and problems would be highlighted. Ideally it would look at all contributions to these 'policy cycle' needs, and not certification on its own. (This information would be very qualitative and may be difficult to subject to trends analysis.)

Who could do it?

Assessment on a regular basis by multi-stakeholder groups (national forest certification working groups or national forest programme steering committees), and forest authorities.

INDIRECT IMPACTS OF CERTIFICATION ON TROPICAL FOREST MANAGEMENT AND PUBLIC POLICIES¹

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1 INTRODUCTION

Forest certification has been conceived as a new instrument to promote sound forest management practices in all forest types, ranging from boreal to tropical rainforests (Viana et al. 1996; de Camino and Alfaro 1998; Bass 2000). In the process of structuring the Forest Stewardship Council (FSC), it was hypothesized that forest certification would become a catalyst of change of tropical forest management (Viana 1995). The objective of this paper is to assess this prediction in relation to natural forest management.

The area of forests certified under the FSC scheme has grown rapidly: there were 24,605,130 ha of certified forests worldwide and 869,020 ha for Brazil as of September 14th 2001 (FSC 2001). There are 278,110 ha of certified forests in the Brazilian Amazon, most of which were certified in the past 2 years (Table 1). These are the most obvious and *direct* impacts of certification. These direct impacts involved different degrees of change in forest management systems, in social, economic and ecological terms (Elliott and Viana 1995; Guillen 2000).

Forest certification has also brought about *indirect* changes of certification on forest management and sustainable development in general. There are several categories of indirect impacts of certification: (i) institutional policies and roles, (ii) dialog and partnerships, (iii) funding for forest-oriented activities, (iv) investment in forest technologies, (v) private sector investment, (vi) community investment. The main objective of this study is to analyze the indirect impacts of certification.

¹ Presented at the IUFRO Science/Policy Interface Workshop on "Forest Science and Forest Policy in the Americas: Building Bridges to a Sustainable Future" to be held at CATIE in Turrialba, Costa Rica from October 30th-November 1st, 2001.

Thanks to all people who gently offered their time and expertise to discuss the indirect impacts of certification. Thanks to Fausto Amabilini for research assistance.

Table 1: Operations certified by FSC accredited certifiers in the Brazilian Amazon, with its respective area of forest management (ha), cumulative total area (ha) and year in which it was certified

OPERATION	AREA	CUMULATIVE TOTAL	CERTIFICATION YEAR
Mil Madeira Ltda./ Precious Woods	80,571	80,571	1996
Gethal Amazonas S.A.	40,862	121,433	2000
Muana Alimentos Ltda.	4,012	125,445	2000
Juruá Florestal Ltda.	12,000	137,445	2001
Cikel Brasil Verde S.A.	140,665	278,110	2001

Source: FSC 2001 updated for 14/9/2001.

2 METHODOLOGICAL APPROACH

The analysis presented here is based on two types of data. First, I carried out semi-structured interviews with decision makers from various sectors: government officials at municipal, state and federal levels, elected mayors and governors, executive directors and staff of national and international NGOs active in Brazil and social movements, directors and staff of certified private forest companies and forestry professionals and researchers. Second, I analyzed the results of a number of seminars and symposia on forest management and certification. The results of these findings are discussed in face of the available literature on the subject of forest certification and public policies (FSC 1998; FSC 2000; FSC 2001).

3 RESULTS AND DISCUSSION

Impacts on private sector

Private sector investment in natural forest production systems has historically been focused on short-term objectives to reduce extraction costs. Very little investment has been made to secure long-term forest production of both timber and non-timber forest production. Certification has altered this pattern substantially.

In the Brazilian Amazon, more than 10 large timber companies have made the strategic decision to implement forest management systems compatible with the Principles and Criteria of FSC. There are substantial investments being made on land acquisition, new forestry professionals, staff training, investment in appropriate machinery, health and safety, land tenure rights, community involvement, image etc.

To the private companies certification represents a risk reduction factor. The likelihood of encountering social and political problems with local communities and environmental groups is perceived as smaller in certified operations than in non-certified ones. In the case

of the private sector, there is also the perception of lower risks of problems with governmental agencies. In addition, there are the potential financial gains that can be derived from certification in terms of market access, corporate image, prices and staff morale. This perceived lower risk increases the willingness to invest in forest-related activities and programs.

This is the case of Gethal, the largest plywood producer in the State of Amazonas, Brazil. Up to a few years ago, Gethal practiced conventional logging systems, with highly negative social and environmental impacts. Logs were bought from producers with little quality control on environmental and social standards. From 1998 onwards, a series of changes took place. A strategic decision was made to obtain FSC certification. A forest management unit was purchased with the intent of implementing a management system compatible with FSC standards. In 2000 Gethal obtained its FSC certification from Smartwood. There are several other cases of conventional forestry operations in the Amazon that are moving from conventional to “good forest management systems” (Viana in press).

Impacts on governments

In the case of government staff and elected officials, certification is seen as a way to reduce potential criticism by environmental and social movements regarding forest management. Many governmental agencies have moved from a period of strong resistance to outside control to awareness of the potential benefits of certification in reducing monitoring costs and in promoting sound forest management systems. There are several cases where certification has become an explicit public policy instrument.

Certification has acted as a risk reduction factor to decision-makers. Political leaders, especially those committed to sustainable development policies, are often unwilling to take the risk of developing policies to encourage forest management. Forest management is seen as a complicated issue, with great potential for criticism from environmental NGOs and social movements. There is also a lack of success stories on which to base policies. Certification reduces the perception of risk for political leaders as it brings broad support from a variety of stakeholders related to forestry. Certification also enhances recognition of the management capacity of forest communities (von Kruedener 1997).

This is the case of the State of Amapá, in the Brazilian Amazon. After 6 years of government (4 years in the first mandate and 2 years in the second), Governor João A. Capiberibe made the decision to launch a major forest management program. A key point in this political decision was the realization that forest certification would bring political support from environmental and social movements (due to potential conservation and socioeconomic benefits of sound forestry systems) and private sector (due to potential economic gains from certification).

Forest certification has developed innovative tools and methods for field forestry audits (Heaton and Donovan 1996). These tools have begun to influence governmental audit systems that are often more directed at analysis of office documentation than field assessments.

Environmental and social movements

The indirect impacts of certification on non-governmental agencies have varied significantly. 10 years ago most environmental NGOs opposed (mildly or radically) forest management as a valid land use option in a broad strategy for conservation and sustainable development. To most Brazilian and international NGOs operating in Brazil, certification has brought about major policy changes. Institutional policies of NGOs towards forest management have altered dramatically and a great deal of this change results from the certification. Several environmental NGOs have come from a paradigm of promoting conservation through strict nature protection only. In many cases, there was little understanding of the potential of forest management as a part of a broad conservation strategy. Certification has given an opportunity to international NGOs to change paradigms and institutional policies towards forest management. This change, in turn, has influenced Latin American NGOs and social movements in changing their institutional policies too. With the growth of certification, many local NGOs and social movements now support forest management as a part of conservation and sustainable development strategies.

This is the case of international NGOs such as Greenpeace and Friends of the Earth who changed their institutional policies towards tropical forest management from total opposition to active engagement in its promotion as an important tool to promote forest conservation and sustainable development. WWF has supported FSC since its beginnings. Large Brazilian NGOs such as SOS Mata Atlântica have also moved from opposition to active support. Today there are relatively few NGOs that oppose forest management in Brazil, compared to 10 years ago. This has had profound impacts on policy making, since NGOs have an active role in formulating public policies in a variety of *fora*.

A noteworthy case is Brazil's National Council on Environment (CONAMA), the most important regulatory body for environmental matters in Brazil. The Council's structure was remodeled in late 2001, to expand the participation of environmental and social NGOs from 12 to 22 members (CONAMA 2001). This increase in participation means greater political power of these institutions on crafting public policies that directly or indirectly affect forest management. Considering that certification has fueled a more positive profile of forest management to most NGOs, it is likely that these changes will bring about more management-friendly forest policies.

Impacts on Dialogue and Partnerships

Historically policy and technical dialogue between industry, environmentalists and social movements on the definitions and implementation of sustainable forestry was rare. This process has been educational to all parties, as they have been forced to understand other part's viewpoints. It has also created channels for dialogue and confidence building (Ervin 1995). The process of developing local standards (Brazil and Bolivia, for example) included balanced representation of these stakeholders in a consensus-seeking process.

The impacts of certification on fostering dialogue have spread beyond the scope of FSC-related activities and have fueled greater participation in the process of formulating public policies.

An example is the process of developing the Brazilian standards for certification of natural *terra firme* forests in the Amazon and plantation forests countrywide. The resulting documents, were approved in September 2001 by FSC Board of Directors. The process included more than 20 multi-stakeholder workshops and meetings. Since the task was to build consensus around a single document, negotiation of different viewpoints was necessary. This was a major challenge, considering that some stakeholders - such as union of forest workers, extractivist communities and private companies - rarely had such an opportunity. The impact was the development of mutual understanding on key issues and developing a culture of negotiation and participation. This increased dialogue is an asset of the process of standards setting and serves as a facilitator to other initiatives aiming at developing public policies through participatory processes.

Impacts on Funding for Tropical Forestry

For those private and public institutions engaged in promoting sound forest management systems, certification increased political and financial support to their activities.

In the late 1980s, as a consequence of high levels of tropical deforestation, forest fires and uncontrolled logging, donor support towards tropical forest management decreased sharply. Campaigns to boycott tropical timber were carried out in Europe and North America. International development policies were put in place to reduce or eliminate support to tropical forest management.

An important case was the World Bank's 1991 Forest Policy that prohibited the Bank from supporting tropical forest management, mostly as a result of pressures from environmental NGOs. This policy, in turn influenced national policies. The Amazon Development Bank of Brazil, for example, included in its guidelines a prohibition on financing chainsaws, even in forest management projects.

FSC certification has contributed decisively towards changes in policies of donor and financial institutions. The World Bank, for example, established an Alliance with WWF to promote certified forestry. Certification was also fundamental in introducing forest management in the Pilot Program to Protect the Brazilian Rainforest through the US\$ 20 million Project to Support Forest Management. Private donors such as the Ford Foundation have also increased their support to tropical forest management projects. Another case is the Government of Amapá's decision to allocate R\$ 1,5 million² to forestry development, including direct support to community forestry and commercial forestry.

Impacts on Investment in Forestry Technologies

Tropical foresters have historically been called in by timber companies to carry out inventories and provide documentation to obtain governmental licenses to logging. Rarely have they been called to provide long term assistance to implement sound forest management systems. Certification created a new demand as forest management units had to be prepared for rigorous audits. Foresters are now being contracted to plan and implement

² USD\$ 1,00 = R\$ 2,70.

de facto management systems. This has produced a major change, demanding new professionals and also increasing the respect and value to professional foresters.

Certification has also generated new demands. Foresters and other professionals are being requested not only to carry out planing and implementation of conventional operations. Participatory planning and negotiation skills are high on the agenda. This has posed new challenges to universities, as these skills were not a strong component of conventional forestry educational programs.

There are many other technological challenges that have arisen from certification. Development of low cost and information-rich criteria, indicators and verifiers is an example. There are many others. These challenges have created new opportunities for research and development programs.

A noteworthy case is the Tropical Forest Foundation, an NGO that promotes training to forest workers on reduced impact logging. They have faced a rapidly increasing demand for their services. Another case that deserves attention is the Federal Agrotechnic School of Manaus, which created the first technical level course on forest management. Their students are facing a very favorable job market, with private companies and communities engaged in certification-oriented forestry.

Impacts on Community Involvement with Forest Conservation

Many Indian and extractivist populations that have tropical forest territories have been pushed towards agricultural expansion. This has been a result of governmental policies and market advantages of agricultural products compared to timber and non-timber forest production systems. There are few cases of effective policies to promote community forestry in Latin America (Gram 1997; Irvine 1999; Kopp and Domingo 1997; Merino 1997; Merino and Alatorre 1997).

Certification has begun to change this pattern as many communities are engaging in tropical forest management projects. A large number of community forestry operations in Mexico, Guatemala, Bolivia and Brazil have been certified or are in the process of certification. There is a new breed of community forestry initiatives in Latin America, most of them influenced by FSC standards for sound forestry management systems.

These communities are being stimulated to reduce agricultural expansion and increase forest protection. This is likely to result in better forest conservation and improved livelihoods.

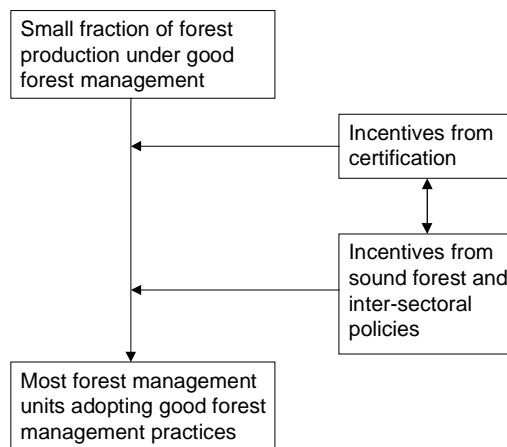
An example is the the Participatory Forest Management Project, based in the Chico Mendes Agroextractivist Settlement, in Xapuri, Acre, Brazil. It is the birthplace of the "empate" (stop deforestation) movement led by late Chico Mendes. The challenge of this movement was to stop deforestation by ranchers and secure land tenure rights for rubber tappers. The silvicultural system is based on small but frequent harvests, based on the precautionary principle. The timber production system was certified in early 2002 as the first Brazilian community forestry project to obtain FSC certification. A WWF-Bolivia Program is supporting a number of community forestry operations in Latin America to obtain FSC certification.

4 CONCLUSIONS

There are a number of indirect impacts of certification to the development of sound sustainable forestry policies. Forest certification has impacted a wide range of stakeholders, from private companies and community organizations, to public sector and forestry professionals and academics (Viana 2001). These impacts have varied considerably.

In the case of Brazil, there is a new environment for forest-related policy making. The increased dialogue and trust among different stakeholder groups is conducive to more participatory policymaking process. Certification has created an incentive to increase the proportion of forests under good management systems (Figure 1).

Figure 1: Impacts of certification and sound forest and inter-sectoral policies in generating incentives to the desired increase the proportion of forest production under good forest management systems.



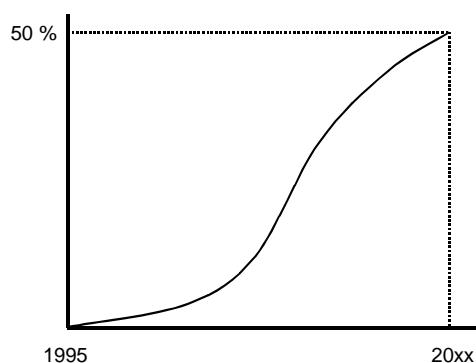
FSC criteria and indicators introduced the concept of simple and trustworthy monitoring procedures that are now being transformed in legislation. There is a new set of Brazilian forestry legislation that incorporates this concept. The predicted outcome is a greater interest and lower costs to private companies and communities in implementing legalized forest management systems. To governments this means cost reduction and better monitoring.

Certification is also becoming an important element of public policies such as forestry concessions (Bolivia) and national forests (Brazil). It may become an important tool to implement Brazil's Green Protocol, which mandates preferential treatment of financial institutions to environmentally friendly operations.

The proportion of operations and forest production that are FSC-certified has been proposed as an indicator of appropriate forest policies (Viana 1995). This macro-level

indicator may become an important tool to monitor sustainable development policies (Figure 2). Depending on the magnitude and synergism between certification and public policies certified natural forest production may surpass conventional production systems earlier than expected.

Figure 2: Hypothetical relationship between percentage of certified forest production or of area under forest management as a function of time. The shape of this curve will depend on the perceived gains from certification and the resources available to improve existing management systems.



Certification has acted as a catalyst of change in tropical forest management and conservation. The direct and indirect impacts of certification have promoted important changes in the forestry landscape in Latin America. These future rate of these changes will depend on the continued market successes of certification and sound policies.

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SECTION II

ECONOMIC AND SOCIAL JUSTICE

CERTIFICATION: A DISCUSSION OF EQUITY ISSUES

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1 INTRODUCTION

1.1 Background

The basis of this paper emerges from 3 key areas of the author's experience:

- A background of community certification - working with community groups to build capacity to manage their own forests for sustainable community development;
- Involvement in analysis of the impacts of certification - working with IIED on a series of case studies and publications;
- Discussion at the Freiburg conference June 20-22, 2001.

The paper draws heavily on a publication produced during the author's work with IIED (Thornber, Plouvier and Bass 1999), incorporating updates and new thoughts.

The focus of the paper is largely on the Forest Stewardship Council (FSC) system of certification, due to the relatively long history of that system. Other schemes are still rather "young" for analysis, but are referred to as appropriate.

1.2 Key concepts

Forest certification was initiated as a tool to promote sustainable forest management (SFM) through communicating to consumers that wood products were verified as originating from well-managed forests. It is essentially a communication tool to link "good producers" with market demand. This has remained the underlying goal, even if many of the drivers of certification have been primarily concerned about their market access.

Many of the original proponents of it believed that, whilst small producers would be easily certified, it would be more challenging to bring big business on board. FSC certification was the first international forest certification scheme, and it was very much designed with communities in mind. It was implicitly expected that it would work well for and benefit community level enterprises and improve equity in the forest industry. However, only a few of the actors in certification have made improved equity an overt goal - notably, the social "chamber" members of the FSC, and some of the development assistance support

to certification. The expectation that certification can address equitable sharing of powers over forests, and benefits from forest management, continues - with development agencies and NGOs often seeing certification as a tool to improve livelihoods.

But the history to date of FSC in particular shows that big business has been keen to be involved in certification, and trends (see below) show them at the forefront of the application of certification. This shows the strength and success of certification as a market-based instrument (MBI), but also raises concerns about equity, in terms of who can achieve it and who can benefit from it.

This paper discusses these equity issues raised by forest management certification, and their implications to all stakeholders, but with a focus on the poor, smaller producers and poorer producer countries. It aims to highlight areas for improvement - an approach consistent with the philosophy of certification itself - and considers what the limitations of certification might be as a tool to address equity and livelihoods.

2 TRENDS - WHO'S BEEN GETTING CERTIFIED

Analysis (Thornber 1999a) of a database of all FSC certificates showed the following:

- The USA has the highest number of certificates (43) covering around 10% of the total area.
- Sweden has the highest area of certified forests, with 52% of the total.
- Developed countries have 66% of the certificates and 80% of the area, and the average certified area of each enterprise is twice as large (116,371ha) as those in developing countries.
- Africa, Asia and Oceania remain minority players, with only 8%, 4% and 5% of certificates respectively.
- Industrial enterprises dominate, with 35% of certificates and 66% of the area, mostly in certificates over 10,000ha. Community enterprises have 25% of certificates, but only 3% of the area.
- Boreal/temperate forests dominate over tropical and subtropical, natural over plantation, and conifer over broadleaf, in terms of certificate numbers, areas and average sizes.

The trends have changed little in the interim, with certification remaining predominantly in the north. Commercial plantations account for an increasing proportion of certified forest, especially in developing countries.

Conditions placed on certificates are predominantly related to: management plan documentation; monitoring (especially in developing countries); and environmental impacts (especially in developed countries). European certificates appear to have fewer conditions placed on them, presumably a consequence of higher initial management standards, and of well developed national standards in some cases (e.g. Sweden).

It has become clear that the original expectations about who would take up and benefit from certification have not been realised, and there are clear patterns emerging - some

enterprises in some regions are less likely to achieve certification than others. Industrial operations in developed countries clearly predominate. As expectations that certification can contribute to broader livelihood goals also remain, the reasons behind these emerging patterns need to be understood to ensure a more balanced future.

3 WHAT IS “EQUITY”?

Discussions at the conference highlighted differing interpretations “equity”. For this paper, the following issues are the focus.

3.1 Inequities between who?

Inequities may be faced at different levels:

- **International** (the north-south divide) - concerns relate not just to differences between developed and developing country enterprises, but also to the variable market conditions, and the needs to harmonise different schemes. All schemes should be comparable if the credibility of certification as a whole is to be maintained.
- **National** (enterprises of different sizes and types) - there are differences between enterprises (table 1) and land-use types (table 2).

Table 1: Generalised forest enterprise categorisations

Integrated companies	or	Single-stage companies
May own/manage forest, harvest and process and produce end-product.		Specialise in one aspect; e.g. harvesting, processing, paper, trade.
Large companies	or	SMEs or community enterprises
With reasonable technical and managerial capacities, and ability to bear financial risk. Good external communications. Highly capitalised. Economies of scale allow flexibility.		Sometimes low levels of technical and managerial skills in-house. ¹ Risk averse. Poor external communications and access to information. Low capitalisation allows flexibility to adapt.
Multi-national company	or	National/local company
With access to global resources, skills, markets and finances. Good external communications, dynamic, responsive, with access to a wide range of markets.		Skills and finances may be nationally limited, more risk averse. Poor external communications and information.
Private companies	or	State enterprises
Profit motive dominates, individual or corporate ownership.		Restricted to state funding and policy, often subsidised.

Source: Thornber et al. 1999.

¹ It is important to note that some small companies are very well managed, with a great deal of skill and experience.

Table 2: Differing forest land-use priorities.

Timber production	or	Mixed land-use	or	Management for environmental benefits
Where timber is the sole or main product, prioritised in management for regular cash returns.		Rural livelihood systems, where farmers use trees in a flexible and integrated way within a broader land-use for farming etc. This requires flexibility in time and space management, and is rarely formally planned.		Forests managed not for timber, but to provide environmental benefits such as watershed protection, slope stabilisation, carbon sequestration, etc.

Source: Thornber et al. 1999.

Certification is based on generalised conditions and a commercial focus of land-use. With such a diversity of socio-economic situations, enterprise types and land-use norms, can we expect a single approach to certification to serve all equally?

3.2 Equity over what?

The main kinds of concerns relate to the assumptions inherent in current certification systems, especially the models of forest enterprise and markets on which certification systems appear to be based, compared to the range of stakeholder and land-use realities. There is a perceived lack of equity in the following areas. In essence, these introduce a set of preconditions for certification to happen and be useful.

- Participation in the development of certification schemes and standards.
- Standards against which forest management is measured.
- Availability of resources to meet standards.
- Ability of the enterprise to bear costs and risk.
- Markets accessible to the enterprise.
- Access to information.

Thus potential inequities relate to the differing abilities of different enterprise types and regions to reap the benefits and enter the process of certification (section 4). This is influenced by the driving forces in the development of schemes and which players' interests dominate² (section 5).

4 EQUITY IN ACCESSING CERTIFICATION

Global or generalised certification systems are inevitably based on assumptions about the range of countries and enterprises to be involved. Most equity concerns relate to

² Promotional targets will also be influential: for example the WB-WWF alliance 200 Mha target has the potential to favour only large companies with large areas to certify.

assumptions about opportunity and access to certification - the “preconditions” noted above. The debatable reality is that not all countries or enterprises have an equal opportunity of accessing certification and reaping its potential benefits. There are differing levels of inequities emerging between developed and developing countries (international) and between large and small enterprises (national).

4.1 Participation

For a scheme to be equitable, all stakeholders must be represented in the process of its development: including large or small enterprises, from developed or developing countries. Those not represented cannot easily influence the development of the scheme or the standards. Whilst schemes such as the FSC are based on principles of representative participation, in practice different schemes have different levels of participation, and even FSC is under-represented in its social “chamber” and struggles to include those not formally recognised as forest stakeholders.³

Equity between developed and developing countries. The current trend remains for certification schemes to be predominantly driven from northern, industrialised countries.

For example, the ISO TC/207 working group for the certification of forest industries consists of industry and forest owners largely from developed countries (Ghazali and Simula 1998). All FSC accredited certifiers are still located in developed countries, which may add to access and cost problems for enterprises in developing countries (Viana et al. 1996). This also leads to a risk of concentration of knowledge and financial benefits from certification in developed countries. Capacity building is key to promoting sustainable forest management. Certifying bodies are in a unique position to share expertise but this is unlikely to be done effectively by international consultants on a tight schedule, and knowledge is more likely to remain within the institutions and countries where the certifiers are based.⁴

This northern predominance in certification processes has led to an increase in the development of regional- and country-specific systems. This may be good in terms of development of locally appropriate and more cost effective systems, and may have rooted the system and principles of SFM more centrally in national policy, in part due to greater government involvement. However, it has implications for the consistency of different certification systems. Some level of harmonisation and consistency of certification systems is seen to be critical for the long-term credibility of certification as a whole.

Equity between large and small enterprises. Despite original ambitions of FSC, community managed forests and farm forestry (estate woodlands and SRLs) haven’t been able to fit well in to current systems. FSC’s systems have tended not to regard the local population as potential managers, and don’t recognise undefined forest areas and flexible management approaches. For both community forests and farm forestry, conventional management plans, documents and access to a market which demands certified products are likely to be unusual. FSC caters better for producers operating within a market environment than those managing woodland in a SRL context. Box 1 indicates how SRL systems are

³ For example, those for whom forestry (as opposed to other land-use systems) is not a main management objective.

⁴ Increasingly, certifiers are using local assessors where possible to combat this problem.

currently effectively excluded from certification systems. Certification has yet to recognise the value of forests in complex land-use systems. Recognition of local, often undocumented management practices has been particularly problematic.

Box 1: Sustainable Rural Livelihood systems (SRLs) and certification

SRLs often include forest land, but rarely as the main or constant priority in land use. The same can often be said for community forestry. Forest in this case, as in a European farm or estate land, is like a savings bank, to be used in times of need. It is unlikely to be cleared or removed as it is seen as a very valuable asset. Certification demands management systems, a defined area of forest, and long term plans. Few SRLs or farm woodlands have this level of planning and commitment, and can't easily fit into the certification model. Other systems are required if timber from such systems is to reach certified green markets or if proof of SFM is to be demonstrated.

4.2 Standards

Standards provide the baseline principles and criteria (P&C) against which forest management is measured. Internationally accepted standards rely on representation, participation and consensus. The level of participation in the process of developing the standards defines the particular "model" of sustainable forestry on which they are based. The applicability of the general model to the wide diversity of enterprises, production systems, forest types and regions they aim (or are used) to cover may be questioned.

Equity between developed and developing countries. Until recently, the most active players in developing standards have been in the north. There is then the risk that the standards can also be seen as representing predominantly northern, industrial values. Perhaps as a consequence, many countries have developed national standards.

Standards are a difficult issue where forestry is not the focus of management, as is often the case in developing countries. There, forests or tree resources may form only a part of SRLs, in contrast to developed countries, where the forest is a separate unit of production. SFM is only one means of supporting sustainable development, and sometimes other land uses may be preferable and more appropriate in a livelihood perspective.

Equity between large and small enterprises. Current certification standards tend to reflect the interests and values of enterprises that concentrate on production forestry, where fibre production is the main objective of management. Forest enterprises which are not familiar with formal, documented management systems and concepts of inspection, but which nevertheless produce sustainable results through less formal checks and balances, are likely to be at a disadvantage.

4.3 Resources

Certification often means changes in management at the forest level, improving documentation and drawing up management plans. The enterprise must have the ability to apply capital, skills and other resources to make these changes, and/or meet certification standards in other ways.

Equity between developed and developing countries. Experiences of certifiers indicate that the level of forest management in natural forests in developing countries is very low. Rather, timber production, by small, medium or large companies producing for the market, often means simply log extraction. This trend often reflects inadequate forest legislation and forest services lacking the necessary resources or incentives to act as forest stewards. This means that in developing countries there appears to remain a wide gap between the actual practice of logging and any minimum standard of forest management required by certification. Consequently, the management changes required to implement certification may be more challenging than for an enterprise in a developed country.

Equity between large and small enterprises. Not all enterprises have a similar capacity (financial or managerial) for change. Large and multi-national companies are more likely to have technical capacity, management structures and skills to effect the changes required to meet standards. Small enterprises may have embryonic management structures, or, where management is good, have less technical and financial flexibility to implement any changes in relation to products demanded by the market. They rarely have the scope to obtain or appoint specialist services for new initiatives when necessary. For an SRL system where forest management is only one element of a wider subsistence system, considerable short-term, informal flexibility must be maintained, making planning and documentation difficult.

4.4 Costs and Risks

The direct cost of certification itself can be high,⁵ involving specialist accredited certifiers. The indirect costs of implementing associated management changes and producing products to the quality demanded by the North American and European market add to this. In making the decision to certify, unless there are guarantees of returns to cover these costs,⁶ the enterprise is at risk of losing money. The enterprise must have the financial robustness to bear the costs and risks.

Equity between developed and developing countries. The lower level of management standards typically seen in developing countries means that there is often a high (indirect) cost to be met in order to reach a minimum acceptable performance standard (ITTO, 1994). Direct costs may be higher due to the complexity of the system requiring more time for inspection visits, as well as higher travel costs for inspectors coming from the

⁵ It is difficult to suggest an average cost for certification. Costs may range hugely between enterprises, dependent on previous experience of certification, standards of management, legal requirements, certifier and location (A. Jenkins, personal communication, 1999). However, certifiers have observed costs of certification doubling since 1996 through tightening of FSC regulations and demands (J. Sandom, personal communication, 1998).

⁶ A valuable role for buyers groups.

north. Many enterprises in developing countries do not have the financial or technical capacity to bear these costs.

Equity between large and small enterprises. Enterprises with larger profit margins and financial buffers will find the costs easier to bear than those with other, livelihood objectives to cover, and might see certification as a means of market risk avoidance (SGS 1999). Small enterprises or rural land-users may be unable to take on additional costs and risk without support.⁷ Through simple economies of scale, the costs of certification in proportion to income are relatively lower for large producers than for small ones. Larger and multinational enterprises are more likely to have access to credit and capital.

4.5 Markets

For the costs and associated risks of certification to be acceptable, the enterprise must be selling products into a market which demands certified products, and thus gaining market advantage or premium prices. Market conditions vary globally, and between enterprises and their location and capacity. If the supply chain from the enterprise cannot enter such environmentally sensitive markets the benefits are unlikely to be realised. Certification will be an unviable business decision. This seems to have been the case for various community-held certificates, notwithstanding the fact that some other non-business benefits have been gained (Markopoulos 1998a, 1998b, 1999).

Equity between developed and developing countries. Certification can only act as “soft policy” to modify those markets which are responsive to environmental concerns. It is acknowledged that it will still take a long time before consumer demand for certified timber might arise in most developing countries. There are exceptions. In Brazil a buyers group has been formed. In South Africa, certification has changed the face of forestry (Roberts 1999). In Asia, traditionally “untouched” by environmental values, buyers’ groups for certified products are being formed in Hong Kong and Japan (J. Stead, personal communication, 1999). However, many expect that overall demand for certified timber within the developing countries will remain relatively insignificant.

Equity between large and small enterprises. Many stakeholders are increasingly realising that without a market for certified produce certification will not be viable, unless some other benefit is gained. Debate in PNG and in Costa Rica has centred around this issue, with some organisations promoting certification for the sake of better management, whilst others question who pays and who benefits if there is no market (S. Zibe, personal communication). Even where there is a market, many small enterprises may experience difficulties with (1) marketing their produce in competition with larger companies, and (2) achieving the quality and consistency of supply demanded by the market, so adding further costs.⁸ Even the most well-developed community enterprises in Mexico struggle to compete

⁷ Increasingly, donors and NGOs have supported certification of community enterprises to demonstrate achievement of SFM.

⁸ This was one of the reasons for UK retailers deciding against sourcing tropical timber direct from certified community producers, and instead favouring larger and more reliable producers.

with larger companies in the market for certified produce, due to inadequate industrial capacity and business skills (Markopoulos 1999).⁹

4.6 Information

Critically, enterprises must have good access to information, both about *certification* and the *markets* of certified products. Information is needed to help an enterprise understand certification, decide whether certification is appropriate, whether they can tap into the niche market, and how they can be involved in the development of certification processes and schemes. Where there is no local market to stimulate information flow and no local participation in any certification schemes, availability of information will be limited.

Equity between developed and developing countries. Developing countries in general do not have the same access to information on certification as do countries in the North, in part because the concept, processes and systems were largely driven from the North, as noted earlier. Information networking and exchange is usually more difficult in developed countries due to poor communications.

Similarly, as markets for certified timber are predominantly in developed countries, it is more difficult for producers in developing countries to get access to information on the requirements of these markets. Producers and industry in developed countries with “green markets” have gained a head start that might be difficult for others to make up, potentially reinforcing the inequities.

Equity between large and small enterprises. Availability of information about certification and markets probably depends more on an enterprise’s international location than its size. However, larger enterprises have been more closely involved in the development of certification processes and are more likely to be accustomed to the concept of inspection and audit than small enterprises. Larger enterprises, especially integrated and multi-national ones, are more likely to be better networked to information from both the forest management and the marketing point of view. Enterprises not operating within a global environment will find it more difficult to spend time and effort finding out about certification or related markets.

5 EQUITY IN GAINING BENEFITS

Whilst forest certification remains a relatively new concept, some case studies are bringing real evidence to light (e.g. Bass et al. forthcoming). This experience is beginning to show us who benefits most from certification and where the barriers to accessing the benefits lie.

⁹ Poor market accessibility is not completely limited to small companies. The Collins Pine Company in the USA has holdings of over 120 000 ha, but has encountered numerous barriers to marketing certified products, despite adequate marketing skills (Markopoulos 1999).

5.1 Which enterprises can certification work for?

As a market-based instrument, certification means entering into competition. Competition inevitably produces winners and losers. For any enterprise, decisions about whether to certify are about the trade-offs between costs and benefits, and the consequent chance of remaining a winner. These chances relate mainly to:

- **Who drives the processes** and thus for which enterprises are certification systems most appropriate?
- Who has most chance of being **able to meet the standards**?
- Who can **enter the markets** for certified produce?

Who drives the processes and thus for which enterprises are certification systems most appropriate? Many certification systems remain more appropriate for the larger, industrial enterprise, which have driven their development, than for other enterprises. At least 43% of FSC certified enterprises are of forests over 10 000 ha, and the trend for larger enterprises to be certified is continuing. The participation, interests and understanding of smaller enterprises have been less evident in the initial development of certification processes and standards.¹⁰ The case of the development of certification processes in Sweden provides a useful example of winners and losers with respect to who drove the process, as described in Box 2.

Box 2: Sweden: groundbreakers in national FSC processes?

The Swedish national standards (the first FSC *national* standards) were developed *with* FSC, and with large industry, such as AssiDoman, being a strong promoter and driving force in the process. Thus the standards developed are very appropriate for large-scale Swedish industry. There has been a spectacular uptake of certification amongst large industry players in Sweden, which leads the world in terms of area of forest certified by FSC.

AssiDoman, for example, advertise that their benefits have been an increased market share from existing customers and attraction of new customers.

However, small enterprises found it difficult to participate in the development of the FSC system in Sweden, because of unacceptable demands on their management systems. They have not felt benefits from it, and there has been very limited uptake of FSC certification amongst them. Instead, they recently created their own certification system.

Source: Assi Doman 1999; T. Klingberg, (personal communication, 1999).

Who has most chance of being **able to meet the standards**? Equity in accessing certification also clearly relates to an enterprise's capacity to change. Recent work focusing on the problems for small businesses shows that small forest managers have identified cost,

¹⁰ Alternative certification schemes such as the Pan European Forest Certification scheme (PEFC) has emerged to offer an approach manageable for forest smallholders in the face of more challenging FSC demands.

excessive documentation and difficulties in meeting the standards as major problems (Scrase 1999). The implications are that smaller, weaker, enterprises which have more changes to make in order to meet standards, will be at a disadvantage. Rather than turning bad producers into good producers, certification tends more to simply reward the good producers. The relatively low numbers of certificates in Africa and Asia (only 12% of the total), where regulation, awareness, and management levels are generally lower, reflect this.

Who can **enter the markets** for certified produce? Certification cannot *guarantee* market access or share, only enhance them *if* products already meet all other certified market requirements (Markopoulos 1999). Even if enterprises can reach the standards, certification can only effectively help those who are already able to produce the right products and market them well enough to recoup the costs and reap benefits. Stronger enterprises in the right market-places will benefit more from certification. Box 3 shows examples of poor rewards from certification to the producer due to inadequate marketing capacities.

Box 3: Winners and losers in the market for certification

Unequal benefits from green-market access are evident in Honduras, where the *campesino* groups have had their forests certified. They can only supply at the prevailing market rate to larger companies, who have better developed processing and marketing skills and links to an export market. The *campesino* groups win no financial gain, whilst the exporting companies reap the profits of selling to the green markets of North America. Certification is seen by many to be unviable for “wokabaut” (portable) sawmill operators in PNG, as they cannot access green export markets for the round logs or sawn timber produced. Most is currently exported to Japan, where there is as yet no market for certified timber, and usually via intermediary traders. A community-based enterprise in Zambia saw certification as a “ticket” to export markets, but despite certification, buyers have not found the product quality acceptable. Payments have been stopped and purchases cancelled - without attention to market needs, certification has not been useful.

Source: Markopoulos (1998b); S. Zibe, personal communication, 1999; Thornber 2000.

5.2 Alternative impacts of certification.

Equity implications of who wins and who loses through certification are also about what changes it brings about and who gains the secondary benefits - certification can affect stakeholders beyond the certified forest enterprises. One of the aims of certification is that forest management ensures benefits not only to the producer but to other stakeholders. At this stage in the evolution of certification systems, it is difficult to be definitive about such impacts. However, key emerging points relate to:

Social issues: Standards relating to social issues have proved both challenging and critical for many companies, as described in box 4 for the example of South Africa. (South

Africa also provides a useful example of where certification has influenced government forest policy.)

The supply chain: Earlier discussion has noted that smaller enterprises may not be able to directly enter the retail market for certified products, and thus financial benefits may be felt higher up the supply chain rather than at producer level.

Box 4: Certification - changing the face of South African forestry

Pressures from UK market demand for certified products, and competition with already certified producers in Poland, has led to all the major companies in RSA becoming certified (ISO and/or FSC).

The companies have made a high level of inputs to reach and maintain good environmental standards - Sappi now has 12 members in its "Green Team". This is leading to much higher awareness and capacities amongst its own staff and contractors.

The strong pressure for SAFCOL to resolve social issues and problems has led to the government making certification a requirement in the company's privatisation.

Social aspects of certification have been the most difficult for each company to deal with and they would like more guidance.

Source: Roberts 1999.

Alternative market applications of certification are discussed by Markopoulos (1999) and include: accessing international finance markets; and attracting corporate partners. These may be especially useful to small enterprises in unstable regions, for whom access to credit and capital for growth are otherwise limited, thus improving their ability to compete equitably.

Other, non-market benefits for smaller enterprises have been observed, as described in Box 5. Additional benefits may include local participation in land-use decisions; environmental improvement and thus better water quality/quantities locally. Community forestry stakeholders in Asia and elsewhere are increasingly looking to some form of certification for recognition of local management (K. Edwards, personal communication, 1999), though do not see current market-based initiatives as appropriate.

Box 5: Alternative uses and impacts of certification

For the Lomerio community forest in Bolivia, gaining certification gave few of the market or financial benefits expected. However, the recognition of high level management standards helped to lead to tenure over the land being given back to the communities.

In the battle to rid PNG of large-scale foreign exploitative logging, NGOs have been variably supporting certification, despite the lack of a clearly accessible market. This appears to be in order to prove that small-scale forestry is good management, and that if small-producers can do it, why cannot the large ones?

Source: Markopoulos 1998a; Thornber 1999b.

5.3 Successes and challenges.

Certification has been highly successful in raising the debate about sustainable forest management, in defining SFM, and in creating standards, principles and criteria against which to measure it. It has increased stakeholder involvement in all of these areas, creating wider understanding, if not trust, and contributed in places to changing policy. It has extensively recognised existing good practice, and a large number of forest companies are now certified by one system or another, largely in response to market pressures. As seen in the example of South Africa, certification has provided useful influence and guidelines in the development of new forest policies, and has helped to develop capacities for SFM. In time it may demonstrate that SFM is viable and that companies do not need to strip forest assets.

However, challenges regarding equity remain, and include:

- Getting consistency of interpretation of standards (P, C&I) in the field,
- Making progress outside of those areas with good policy already in place,
- Getting certification of small enterprises into the market and out of donor support,
- Ensuring that certification is available and beneficial to all enterprises, rather than only rewarding the good.

The distribution of costs and benefits of certification are critical, but are also as yet far from even. In performance-based certification systems (such as the FSC) the costs for enterprises working in natural forests in the tropics generally remain higher than the perceived benefits. There remains little incentive to invest in certification, especially when benefits are doubtful and the green premium is unclear or insecure. Whilst benefits, such as improved environmental management and documentation, have been clearly seen in all enterprises gaining certification, the incremental changes remain limited. Those who can reap the most appear in general to be those to whom it costs the least.

The effective exclusion of SRL land-use from certification systems reflects imbalances amongst the driving forces of certification, which in turn reflects to a certain extent which enterprises are strongest in the market. *If* certification is to be available and beneficial to all,

this issue needs to be addressed, but the issue itself raises the question of whether certification *should* spread itself so thinly or focus where it can be most effective.

6 ADAPTING THE SYSTEMS

As noted earlier (section 4.6), some inequities of certification inevitably lie with the market itself and the nature of competition. Others lie within the evolving processes of certification systems themselves. This section looks at what the “certification community” has done, and can do, to resolve some of the current challenges of the FSC system.

6.1 Certification systems

From the very start the Forest Stewardship Council accorded significance to equity issues between North and South and between different interest-groups. Democratic participation and non-discrimination were inscribed in the statutes and spirit of the organisation. But how has this attention towards equity issues been translated into practice and in the development of the FSC system?

Developing the FSC structure. When the FSC was established in 1993 the voting power was divided between 2 chambers: economic (1/4) and social/environmental (3/4). By 1996, strong criticisms were accumulating from trade and industry players, who felt under-represented. FSC’s response was to modify the structure into three chambers: economic (1/3), environmental (1/3) and social (1/3). The three chambers have Northern and Southern sub-chambers, with 50% of the total chamber votes each. The complex structure of chambers and sub-chambers is aimed at equality and balanced power between interest groups.

The current membership of the FSC does not provide the intended balanced representation for each chamber and sub-chamber. Box 6 describes the current membership of FSC.

Box 6: Current membership of FSC.

The 488 FSC members (June 2001) are distributed as follows:

	<u>North</u>	<u>South</u>	<u>Total</u>
Economic chamber:	183	46	229
Environmental chamber:	113	61	174
Social chamber:	61	24	85

A total of only 131 members (27%) are from the south, though this is an improvement on the 22% in 1998. The majority of them are in the environmental chamber.

Source: FSC website, June 2001.

There is a clearly lower representation of members in the social chamber and of those from developing countries. Whilst each chamber is given an equal weight in voting, thus largely resolving the problem, efforts still need to be made to address representation. A more balanced membership (and therefore voting) should represent the full range of concerns and help combat the confusions over social P&Cs noted earlier.

Clearly, whilst the principle of balanced interests is inscribed in the structure of the organisation, the development of membership and processes in developing countries, particularly in Africa and Asia, has been very slow. This imbalance has the potential to lead to a misrepresentation of forest management and certification issues in developing countries within the FSC. The fact that all certifying bodies are based in the north does little to help this.

The FSC Principles and Criteria (P&C) apply to all tropical, temperate and boreal forests, both natural forests and plantations. The P&C suggest that FSC and FSC-accredited certifiers will not insist on perfection in satisfying the P&C, but that major failures in any individual Principle will normally disqualify a candidate from certification. Some flexibility of interpretation is allowed to respond to local circumstances, and certifiers have recognised this as useful. However, this does not extend to allow for situations where the knowledge, training and level of formal forest management is far below the standards generally assumed, for example in small natural forest enterprises in developing countries. FSC remains a system based on minimum performance, and there is no scope for this uneven playing field to be addressed. There is a gradually increasing recognition that in natural forests in developing countries it might be more appropriate for acceptable performance levels to be lower initially. A step-by-step process might help ensure that certification is able to be workable as an incentive for improving forest management in developing countries and smaller enterprises.

System development. The FSC is still at a developmental stage, but its continuing evolution is clearly demonstrated by the relatively recent development of guidelines for developing regional standards, group certifications, NTFP certification, and percentage-based claims - as outlined in box 7 below. Ways forward for solving the problems for small enterprises have been highlighted recently by the certification community (Scrase, 1999). Other issues, particularly those of more relevance to developing countries, have not been fully addressed, partly because of lack of pressure from developing country stakeholders. FSC recognises many of its challenges, and the General Assembly of June 1999 brought about moves to address several other issues relating to equity (Dixon, 1999), including:

- An examination of the implications of participation of government bodies as FSC members, a study commissioned by the General Assembly.
- Establishment of a technical committee for improving access to certification for small-scale enterprises. It may look at simpler, more cost-effective processes for small operations.
- Support from the board to social chamber meetings and work with the social working group on fund-raising.

Box 7: FSC: Addressing the inequities

- *Regional certification standards.* A risk of the systems being developed in the north is also that the standards may be perceived as representing predominantly northern, industrial values. FSC National Initiatives have started up globally to tailor the generic FSC P&Cs to local situations, whilst in other places nationally driven standard developments have been accepted by the FSC.
- *Group certification policy.* This allows for several small enterprises to be covered by one certificate. Group managers hold the certificate and ensure that group members' management complies with the requirements of the group. This reduces the individual certification costs for each enterprise. Tillhill, a UK forest management company, is offering free certification to enterprises of less than 100ha under its forthcoming group certificate, whilst charging increasing amounts for larger enterprises.
- *Percentage-based claims policy.* This allows paper and composite wood products to contain less than 100% of certified wood products (minimum 70% of the virgin wood fibres should be certified). It is important for processing companies sourcing from many producers and aims to prevent smaller producers being squeezed out of local markets as a result of *not* being certified.

Source: FSC website September 1999; A. Jenkins, personal communication, 1999.

6.2 Applying the standards¹¹

Certifiers acknowledge problems of imbalance in the amount of certification of enterprises in developing countries and smaller groups. Certifiers commonly recognise that the flexibility which is built into FSC Principles and Criteria for local circumstances is useful in addressing some inequities, and boxes 8 and 9 show how two UK certifiers have looked for other ways to resolve the problems.

Box 8: Addressing the inequities: Qualifor

SGS has addressed the *information* problem by trying to make information available directly to clients in the South and through the SGS-affiliate network (SGS is a multinational company with branches internationally, e.g. in Papua New Guinea and South Africa). This network is also useful in addressing the inequities in *sharing of experience and knowledge* of SFM as discussed in section 3.1. Information documents are provided on forest certification, the procedures, how to meet the standards, etc.

SGS see training and *building capacities* to meet the standards as a priority to be addressed, especially in developing countries. SGS also organizes several training courses on forest certification, chain of custody and environmental management systems.

¹¹ The source of this material is from interviews conducted for the EFI paper (Thorner et al. 1999).

Increasingly certifiers are using local assessors where possible to make certification cheaper and more based on local understanding and knowledge. The Rainforest Alliance (Smartwood) has developed a promising example of partnership between northern certifiers and southern organisations who implement the certification. This “Smartwood Network” is well developed in Latin America, but such networks hold clear implications for monitoring and standardising of certifiers.

Box 9: Addressing the inequities: Woodmark

The Soil Association also acknowledges the problem of access to information, knowledge and capital for many clients in developing countries.

Recognising the difficulties and inequities for these enterprises, the Soil Association makes particular efforts on flexibility towards social issues in its certification assessments in developing countries.

Whilst the Soil Association is an NGO, and subsidies have in past been received for the operation of Woodmark, it is their aim that certification should pay for itself. This means that additional costs of improving these inequities cannot be freely borne by the certifier. As a consequence, a majority of their activities have been in countries such as Sweden, and they have expressed concern that international inequities can be reinforced, as less time and resources are left to be directed to developing countries, from whom they gain less revenue.

Capacity building in developing countries is apparently important to Woodmark and they have run several certification training programmes, for example in the Solomons and Sri Lanka, and contributed to those run by other organisations. Their current emphasis overseas is to develop local certification capacity, as a way towards genuine sustainability through reducing costs and improving the local relevance of services.

Training is generally seen as critical and needed on two levels: training about certification; and training to raise management capacities. The funds needed for training are often not huge sums of money but need to be flexible so that they can be used appropriately as needs arise.

7 IMPLICATIONS FOR THE FUTURE

Whilst certification holds many potential benefits, it is not a panacea to the problem of promoting SFM for all forest stakeholders. Benefits are largely to be gained by those who are already successful, already doing the right thing. How certification can tackle the “real” forest problems and distribute benefits equitably is a challenge for all involved in it.

7.1 Support in the right place

Certification has been widely supported by NGOs and donors as an innovation in promoting good forest management. Past support has focused on direct support to developing certification initiatives and to demonstrate good management of their projects. Increasingly it is being recognised that support to management capacity is also required to enable more enterprises to respond to the certification incentive. This includes supporting both the forest management level and the certification system level - certification bodies with limited capacity are struggling to respond to emerging lessons. Support for the actual certification exercise is recognised as something that is unsustainable and potentially likely to distort the market with which certification operates. If it is the market which is to reward good management, externally financing certification is a misuse of it.

7.2 Expectations vs reality.

Certification is often broadly expected to provide solutions to poor forest management and livelihood problems, across a range of forest types and situations. But the question remains whether certification is the right tool to use on problems outside of the market? Certification - intentionally or otherwise - serves producers within a market environment, rather than those outside the market. Livelihoods are only likely to be improved with support, and are more likely to be a consequence of improved capacities for a variety of aspects of sustainable land use, rather than through uncertain forest product market gains.

High minimum performance standards are an excellent ideal, but in reality will always be exclusive. Step-wise systems of improvement have a role in bridging the gap between current standards of management and fully certifiable standards. Non-market approaches to certification may be required for producers operating outside of a market environment but wanting management verification. Considering how different approaches to certification can complement each other may be key. Each approach needs to realistically define its objectives and boundaries - what can it help to achieve and for whom? Using certification inappropriately will only help serve to detract from its ambitions.

Certification needs to address the emerging equity concerns in order to:

- Maintain its own credibility as an equitable mechanism to promote SFM,
- Avoid further friction between north and south,
- Avoid inadvertent exclusion of some enterprises,
- Promote better forest use in the areas which most need it.

7.3 Concluding remarks.

To ensure a successful future for certification its limits of influence need to be recognised. As a market-based instrument, some inequities will be associated with market systems in general. Markets can and do inevitably result in winners and losers - requiring policy interventions to redress inherent equity problems. Some forest enterprises have clear advantages over others in terms of access to and ability to gain benefits from certification.

The original expectation amongst some interest groups was that certification could act as a “soft policy” to modify markets. But as a market mechanism it cannot be expected to address issues (for example livelihood improvement) which are outside the market. Defining the niche of any certification will be key to focusing efforts where it can most effectively improve forestry practices.

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5.3.3. List of certified forests (31/12/97)

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ECONOMIC AND SOCIAL JUSTICE IN SUSTAINABLE FOREST MANAGEMENT: AN ILO PERSPECTIVE ON FOREST CERTIFICATION

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BACKGROUND

The United Nations Conference on Environment and Development (UNCED) in 1992 led to the general adoption of a concept of sustainable development based on an equilibrium between three components:

- Economic development;
- Conservation of the environment; and
- Social justice.

Forests featured prominently at the Conference and have remained high on the international agenda ever since. In pursuance of the “Forest Principles” and of chapter 11 of Agenda 21 adopted at UNCED, initiatives were launched around the world to define the notion of sustainable forest management in more specific and operational terms. Criteria and indicators were identified, in order to make the new and much more comprehensive concept of sustainable forest management amenable to planning, monitoring and assessment at the national level as well as for the individual forest management unit. The selection and use of suitable criteria and indicators are thus one of the keys to progress in the practice of sustainable forest management. At the forest management unit level, criteria and indicators are used to assess compliance with performance-based certification standards. Various certification and labelling schemes for forest management and/or forest products have been launched in recent years. After a slow start, the forest area certified has increased sharply since 1998.

From the beginning, the formulation of criteria and indicators has suffered from a bias towards environmental concerns and economic interests. Social aspects have been covered to a varying and often unsatisfactory extent, a situation that is gradually improving. A second drawback for an adequate incorporation of the social dimension has been the lack of commonality between the various sets of criteria and indicators. This is due to differences in the choice as well as in the definition of parameters. There is broad consensus that comparability of criteria and indicators internationally and between certification standards is desirable. It has been suggested by various authors that ILO texts could provide a basis for

shared criteria and indicators of social aspects of sustainable forest management (see for example ITTO (1998) and CIFOR (1998)). This paper discusses pertinent ILO texts and presents a suggested set of criteria and indicators. It concludes with a discussion of the limits of certification for promoting social justice in forestry.

The present paper is a summary of Poschen (2000). The full paper is available at: www.gtz.de/forest_certification/english/aktuelles.html

WHAT IS "SOCIAL"?

In order to identify relevant social aspects of sustainable forest management, it is useful to broadly distinguish between two social dimensions: the way people affect forests and the way forests and their management affect people.

People affect forests both positively and negatively. Human input, including labour, is indispensable for the management and protection of intact forests, and even more so for the restoration and rehabilitation of degraded forests.

People are, however, also the most devastating agents of destruction and overuse of forests. Conversion of forest land to other land uses and the degradation of forests through destructive logging practices or unsustainable levels of harvesting of forest products by far exceed the damage done to forests by natural causes such as fire, storms or pests.

It is widely accepted now that many of the underlying causes of forest destruction and degradation are of a social nature. Poverty is probably the single most important driving force for the destruction of forests. There is thus a functional as well as an ethical link to the social component of sustainable development: the equitable sharing of the proceeds of economic growth. Forests need to be socially beneficial in order to contribute to the objective of sustainable development. Benefits derived from the existence and management of forests and accruing to people living in and around them may actually be a precondition for the conservation of the forest.

WHO IS CONCERNED?

Social aspects are about people. To some extent it is the population at large that is concerned, but several groups can be identified that have a close and specific relationship with forests:

- Forest dwellers,
- Forest users,
- Forest owners, and
- Forest workers.

Local communities interact closely with forests. This is particularly true for forest-dependent communities and many indigenous and tribal peoples who derive their economic livelihood and often their cultural and spiritual identity from forests (see Arnold and Byron 1997).

Forest owners account in many countries for a large share of the beneficiaries of forest management. In particular the owners of small, private forests often derive a significant share of their income from their forests. This income can be a major complement to farming or off-farm employment and help to keep rural economies viable. For information on the situation in Europe, where there are more than 15 million private owners, see *People, forests and sustainability* (ILO 1997).

All forest workers, whether salaried workers, contractors, self-employed workers or forest farmers, are obvious stakeholders in forest management as contributors, potential beneficiaries and those whose existence hinges on the sustainability of forest management. While few reliable data exist, it is clear that this is a very large group of people. It has been estimated at some 17 million full-time jobs in forests worldwide; if forest-based jobs in industry are included, the figure is believed to be around 45 million (Poschen 1997).

“CRITERIA” AND “INDICATORS”

Performance-based certification and labelling schemes for forest management and forest products assess the attainment of the objectives of sustainable management set out in principles against a set of criteria and indicators. The latter are a blend of conditions considered vital to ensure the conservation and maintenance of the protective and productive functions of forests and of conditions deemed necessary in order for forests to contribute to sustainable development at large. Criteria and indicators are meant to establish whether or not the objectives and its components are being accomplished.

While most standards have this general structure, the concept has not been applied consistently. As has been pointed out by Tropenbos (Lammerts van Bueren and Blom 1997) this inconsistency is one of the sources of misunderstanding and difficulties with interpreting, comparing and applying existing standards.

SOCIAL CONTENT OF SOME CURRENT CERTIFICATION SCHEMES

An overview of the basic approaches to certification currently pursued in forestry is given in Poschen (2000).

Environmental management systems and declarations of origin are two approaches to certification which are not performance-based and thus by design do not have any social and labour content. Both may, however, have implicit social and labour content in countries, where legislation provides good coverage and is also sufficiently enforced.

Performance-based standards, such as the Principles and Criteria of the Forest Stewardship Council (FSC) or the Pan-European Forest Certification (PEFC) Framework, do have explicit social and labour content. The actual coverage and level of requirements may still vary considerably depending on how the framework or common principles are translated into national standards. Many “hybrid” standards, which combine elements of the management system approach with specific performance requirements, such as “Lembaga Ekolabel Indonesia” and the Canadian CSA, also include some social and labour aspects.

Some schemes, in particular those operating in several countries like the FSC, need to satisfy their clients that products of different origins carrying the same label meet broadly comparable minimum standards. In a not too distant future, all schemes may have to live up to that expectation as they may have to mutually recognize each other in order to avoid a confusing and ultimately counter-productive proliferation of schemes in the market. The “UK Woodland Assurance Scheme” is an example of a national standard designed to meet the requirement of several international schemes, in this case of FSC and PEFC.

The forestry sector is not alone in having deficits and difficulties in adequately defining and integrating social and labour aspects of its operations. An ILO report entitled *Overview of global developments on Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues* (ILO 1998a) identified over 200 codes of conduct and 12 social labelling schemes worldwide (see also Diller 1999).

The report shows that the late 1980s and 1990s have seen a rapid proliferation of codes and to a lesser extent social labelling schemes in practically all economic sectors. In spite of their growing number, codes were found to address social and labour issues selectively and to lack transparency and participation of supposed beneficiaries in their formulation and implementation. Measuring impact is often complicated by the use of variable criteria. On the whole, the content and the practices defined by codes appear to have been largely decided in ad hoc negotiations between interested parties with varying levels of access to information and bargaining power.

THE NATURE AND LEGAL STATUS OF ILO TEXTS

The practices chosen in the following are those that have emerged as being essential in the policy debate and related research (for example Prabhu et al. 1998; Poschen 1996). The sources used are relevant ILO texts. All of the latter reflect international consensus reached by representatives of governments, employers and workers of the more than 170 member countries of the International Labour Organization in formal decision-making processes. All texts referred to have been adopted and/or endorsed by the International Labour Conference or the Governing Body of the ILO.

From a legal point of view the texts fall into four categories:

- Fundamental international labour Conventions;
- Other international labour Conventions;
- International labour Recommendations; and
- The *ILO Code of Practice on Safety and Health in Forestry Work*.

ILO Conventions and Recommendations are formal legal instruments. The Conventions are open for ratification by member States and then become binding for ratifying States, which are obliged to bring national legislation and practice into line with their provisions.

Fundamental international labour Conventions are those underlying the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up adopted by the International Labour Conference on 18 June 1998, and endorsed by all ILO constituents.

The Declaration states that “all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions . . .” (ILO 1998b). Recommendations are not intended for ratification. Rather, they provide guidance and suggestions for national legislation and supportive programmes and institutions.

Unlike Conventions and Recommendations, ILO Codes of Practice are not legal instruments, but may be regarded as “soft law”. The *Code* referenced in the following has been reviewed and unanimously adopted by a meeting of experts nominated by governments and by employers’ and workers’ organizations, representing the forestry sector of 20 major forest producer countries. The experts considered the *Code* relevant and practicable in most countries and enterprises. The *Code* does therefore provide authoritative guidance on forest work.

Of the four categories of ILO texts mentioned, only the *Code of Practice* contains provisions explicitly applicable at the enterprise and worksite levels. The Conventions and Recommendations are primarily addressed to national governments, even though some of them contain provisions for action at the level of individual undertakings. It is recognized, however, that even their general provisions are relevant and applicable in individual enterprises. Extensive use has been made of ILO Conventions and Recommendations, for example, in the ILO Tripartite Declaration on Multinational Enterprises and Social Policy (1977).

ILO TEXTS AND CORE ELEMENTS OF SOCIAL AND LABOUR CRITERIA AND INDICATORS

The following suggestions for a common basis for social and labour criteria and indicators distinguish three broad elements:

- Human input (in particular labour) - see table 1
- Sharing of benefits - see table 2
- Participation + conflict resolution. - see table 3

It is important to make a distinction between human input and the sharing of benefits, because existing sets of criteria and indicators treat issues like worker training and accident prevention as a social benefit, when in fact they are part of the necessary investment in a production process. No other economic sector has attempted to portray efforts to reduce the number of workers killed or injured in its activity as a social benefit to the workers.

The tables give an overview of criteria for these aspects and of the corresponding ILO texts. The full texts of ILO Conventions and Recommendations are available as ILO publications (ILO 1996) as well as through the ILO home page (<http://www.ilo.org>). The *Code of Practice* is available as an ILO publication in English, Spanish and French (ILO 1998). Translations have been prepared by national institutions into several other languages, including Russian, Portuguese, Czech, Slovenian, Latvian, Romanian and Chinese.

CRITERIA AND INDICATORS: HUMAN INPUT (LABOUR)

The *FAO Model Code of Forest Harvesting Practice* (FAO, 1996) identifies the “development of a competent and properly motivated workforce” as one of four essential ingredients in forest harvesting operations if forests are to be managed on a sustainable basis. The statement also applies to forest operations other than harvesting. Table 1 provides an overview of the aspects to consider with respect to labour inputs into forestry.

Table 1: Core elements: criteria and indicators - labour

Human input:	ILO basis for minima:	Legal status of text:
✓ right to organize and bargain collectively	⇒ Conventions 87 and 98	Fundamental right (ILO Declaration)
✓ elimination of child labour	⇒ Convention 138 and 182	Fundamental right (ILO Declaration)
✓ elimination of forced labour	⇒ Conventions 29 and 105	Fundamental right (ILO Declaration)
✓ non-discrimination	⇒ Conventions 100 and 111	Fundamental right (ILO Declaration)
✓ qualified workforce safety and health workers, contractors, self-employed	⇒ ILO Code of Practice on Safety and Health in Forestry Work provisions enterprise and worksite level	Not legally binding

Criteria and indicators for forest work as a human input could be based partly on core labour standards, which have been universally recognized:

- The right to organize and to bargain collectively,
- The elimination of child labour,
- The elimination of forced labour,
- Non-discrimination.

While compliance with some of these standards, such as the elimination of child labour and of forced labour, may seem to go without saying in most forest producer countries, it should be borne in mind that there are violations of them in a significant number of forest producer and exporting countries. They should therefore be part of any common minimum standard.

The above-mentioned fundamental principles are based on the following ILO Conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182);

- Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No.105);
- Equal Remuneration Convention, 1951 (No.100), and Discrimination (Occupation and Employment) Convention, 1958 (No. 111).

All of these are core standards covered by the 1998 Declaration and ILO member States are thus obliged to promote and realize these principles, even if they have not yet ratified the Conventions.

These fundamental standards are applicable to all labour situations, but they do not cover all labour aspects that are relevant to forestry. Two elements that are of paramount importance to the protection of forests and of workers are:

- A qualified workforce;
- Safety and health for all segments of the workforce, i.e. workers, contractors, and self-employed.

The importance of qualifications has already been underlined above. Safety and health are a major concern in forestry, as forestry work continues to be one of the most dangerous of all economic activities and is also beset by a large number of health hazards (ILO 1998c; ILO 1991). An ILO text providing authoritative guidance specifically for the forestry sector in both respects is the *ILO Code of Practice on Safety and Health in Forestry Work* (ILO 1998d).

CRITERIA AND INDICATORS: SHARING OF BENEFITS

The second social element of sharing of benefits applies to both labour and to local communities, whether or not they are composed of indigenous and tribal peoples. In the case of labour, the sharing is primarily in the form of wages and salaries. Remuneration and the minimum wage are therefore relevant criteria. Likewise, one of the most desirable ways for local and forest-dependent people to share in the benefits of sustainable forest management is through opportunities for employment. Such opportunities may be a precondition for sustainable management where local populations would otherwise have no economic stake in the continued existence of the forest and few alternatives to destructive practices for their livelihood. Gainful employment in forestry is in turn contingent on opportunities to acquire the necessary skills.

In addition to or independently of benefits from forest management accruing from wage employment, indigenous and tribal peoples and local communities benefit from, and indeed often depend on, traditional or customary uses. The cultural values of many communities are intimately linked with forests. To be socially sustainable, forest management has to protect these rights and values. Table 2 provides an overview of elements concerning the sharing of benefits and the relevant ILO texts.

Table 2: Core elements: criteria and indicators - social and labour

Sharing of benefits:	ILO basis for minima:	Legal status of text:
✓ remuneration/minimum wage	⇒ Convention No. 131 and Recommendation No. 135	Convention for ratification
✓ employment and training opportunities for local and forest-dependent people	⇒ Convention No. 169 extended by analogy to local communities	Convention for ratification
✓ respect of traditional use rights and cultural values	⇒ Convention No. 169, Arts. 13, 14, 15, 20, 23	Convention for ratification

CRITERIA AND INDICATORS: PARTICIPATION AND CONFLICT RESOLUTION

Forests are subject to numerous, often conflicting, demands from a variety of stakeholders. Participation of stakeholders can be an effective way to defuse conflict and to ensure that the cost and benefits of forest management and utilization are shared in a fair and equitable manner. Effective participation is also seen as a means to maximize the overall use and benefit of forests. Many opportunities to increase benefits are not currently being seized because forest planners and managers are not aware of actual and potential users and their demands.

Both the Declaration adopted at the Earth Summit in Rio de Janeiro in 1992 and the non-legally binding Forest Principles agreed at the same conference include commitments to participation. For those directly affected by forest management, effective participation and conflict resolution require the three elements presented in table 3:

Table 3: Core elements: criteria and indicators - social and labour

Participation and conflict resolution:	ILO basis for minima:	Legal status of text:
✓ the right to information and participation in decision making	⇒ Convention 169	Convention for ratification
✓ the right to organize and defend interests collectively	⇒ local communities C.141, workers C.87, 98, indigenous peoples C.169	Convention for ratification
✓ conflict resolution based on consultation and consensus	⇒ Convention 169, Arts. 6, 7	Convention for ratification

THE PROPOSED SET OF CRITERIA AND INDICATORS

Tables 4, 5 and 6 below provide a suggestion of a set of criteria, indicators and verifiers based on the discussion and the elaboration on the sources in Part II. To facilitate its use in the formulation of new sets of criteria and indicators or the incorporation into an existing set, the suggestion follows the Tropenbos “Hierarchical Framework for the Formulation of Sustainable Forest Management Standards” (Lammerts van Bueren and Blom 1997).

Like the Tropenbos framework, the suggested criteria and indicators assume that “sustainable forest management”, “well-managed forest” or “best forest practices” are the overall goal or objective of the standard.

The principles which the suggested criteria and indicators inform could be broad, such as: “the socio-economic functions of the forest will be safeguarded, now and in the future” or more specific such as “Encourage a wide range of social benefits” or “Maintain and enhance the well-being of forest workers and local communities”.

How the suggested criteria and indicators can best be incorporated will depend on the structure of the standard. Some may relate to general conditions, in particular as concerns qualification and participation. Others may appear under socio-economic and or socio-cultural functions.

Table 4: Criteria, indicators and verifiers for human input (labour) Part One

Criterion	Indicator(s)	Verifiers	Reference
C 1 Respect of fundamental social rights			
C 1.1 Right to organize and to bargain collectively	<p>I 1.11 All workers are able to form and join a trade union of their choice without fear of intimidation or reprisal.</p> <p>I 1.12 Collective bargaining with representative trade unions is carried out in good faith and with best efforts to come to an agreement.</p>	<ul style="list-style-type: none"> - Interviews with union representatives and workers - Collective agreements - Records of labour inspectorate 	<p>Convention No. 87</p> <p>Convention No. 98</p> <p>ILO Tripartite Declaration 1998 or equivalent national legislation</p>
C 1.3 Prohibition of forced labour	<p>I 1.31 No workers in debt bondage or other forms of forced labour engaged (incl. Employees, self employed and contractors).</p>	<ul style="list-style-type: none"> - Interviews with union representatives and workers - Records of labour inspectorate 	<p>Convention No. 29</p> <p>Convention No. 105</p> <p>ILO Tripartite Declaration 1998 or equivalent national legislation</p>

Table 4: Criteria, indicators and verifiers for human input (labour) Part Two

Criterion	Indicator(s)	Verifiers	Reference
C 1.4 Equality of opportunity and treatment	I.1.41 Policies and Procedures make qualifications, skill and experience the basis for recruitment, placement, training and advancement of staff at all levels	<ul style="list-style-type: none"> - Interviews with union representatives and workers - Payroll (of enterprise and/or contractors) 	Convention No. 111 Convention No. 100
C 1.4 Equality of opportunity and treatment	I.1.42 Employees are not discriminated in hiring, advancement, dismissal, remuneration and employment related social security.	<ul style="list-style-type: none"> - Findings of employment surveys - Records of labour inspectorate 	ILO Tripartite Declaration 1998 or equivalent national legislation
C 2 Workforce qualification	I.2.11 Managers and supervisors are in possession of an appropriate qualification, preferably one that is nationally recognized, ensuring that they are able to plan and organize forest operations.	<ul style="list-style-type: none"> - Skill certificates, records of training and skills testing (national or enterprise) 	Convention No. 142
	I.2.12 All workers, as well as contractors and their workers and self-employed persons, are sufficiently educated and trained in the tasks they are assigned to and hold the relevant skill certificates.	<ul style="list-style-type: none"> - Field observation - Interviews with union representatives and workers 	ILO Code of Practice on safety and health in forestry work (1998) or equivalent national legislation and regulation

Table 4: Criteria, indicators and verifiers for human input (labour) Part Three

Criterion	Indicator(s)	Verifiers	Reference
C 3 Occupational safety and health	<p>I 3.11 A safety and health policy and a management system are in place which systematically identify hazards and preventive measures and ensures these are taken in the operations.</p> <p>I 3.12 All necessary equipment, tools, machines and substances are available at the worksite and in safe and serviceable condition.</p> <p>I 3.13 Safety and health requirements are taken into account in the planning, organization and supervision of operations.</p> <p>I 3.14 Where workers stay in camps, conditions for accommodation and nutrition comply at least with ILO Code of Practice on Safety and Health in Forestry.</p>	<ul style="list-style-type: none"> - Safety and health policy statement - Organigramme with safety and health management system - Documented requirements for planning and work organization - Job descriptions of supervisors - Field observations - Interviews with union representatives and workers - Records of labour inspectorate and/or accident insurers 	Convention No. 155 ILO Code of Practice on safety and health in forestry work (1998) or equivalent national legislation and regulation

Table 5: Criteria, indicators and verifiers for sharing of benefits of forest management

Criterion	Indicator(s)	Verifiers	Reference
C 4 Sharing of benefits			
C 4.1 Fair remuneration	I 4.11 Wages or income of self-employed and contractors are at least as high as those in comparable occupations in the same region and in no case lower than the established minimum wage.	<ul style="list-style-type: none"> - Interviews with union representatives and workers - Payroll (of enterprise and/or contractors) - Findings of employment surveys - Records of labour inspectorate 	Convention No. 131 or relevant national legislation and collective agreements
C 4.2 Employment opportunities for local and forest dependent people	I 4.21 Local and forest -dependent people have equal access to employment and training opportunities.	<ul style="list-style-type: none"> - Interviews with representatives of local communities, of unions and workers - Payroll and training records (of enterprise and/or contractors) - Findings of employment surveys 	Convention No. 169 (applied analogously to local communities other than of indigenous or tribal peoples) or equivalent national legislation or agreements
C 4.3 Respect of traditional land use rights	<p>I 4.31 Cultural and traditional values are respected.</p> <p>I 4.32 Traditional access for subsistence uses and traditional activities is granted.</p> <p>I 4.33 Rights of local communities to natural resources pertaining to their land are respected and communities participate in the use, management and conservation of the resources.</p> <p>Note: for both I 4.32 and I 4.33 it is assumed that traditional uses are on a scale that does not threaten the integrity of the resource or the management objective.)</p>	<ul style="list-style-type: none"> - Interviews with representatives of local communities, of unions and workers 	Convention No. 169 (applied analogously to local communities other than of indigenous or tribal peoples) or equivalent national legislation or agreements

Table 6: Criteria, indicators and verifiers for participation and conflict resolution in forest management

Criterion	Indicator(s)	Verifiers	Reference
C 5 Participation and conflict resolution			
C 5.1 Right to information and participation in decision making	<p>I 5.11 All interested parties have access to relevant information.</p> <p>I 5.12 All interested parties have the opportunity to affect decision making.</p>	<ul style="list-style-type: none"> - Interviews with representatives of local communities, of unions and workers - Records of fora for participation (round-tables, committees, hearings etc.) 	Convention No. 169 or relevant national legislation and collective or other agreements
C 5.2 Right to organize and defend interests collectively	<p>I 5.21 All interested individuals are able to form and join organizations of their choice without fear of intimidation or reprisal.</p> <p>I 5.22 Organizations of interested parties are accepted as participants in decision making.</p>	<ul style="list-style-type: none"> - Interviews with representatives of local communities, of unions and workers - Records of fora for participation (round-tables, committees, hearings etc.) 	Conventions No. 169, No. 87 and 98, No. 141 or relevant national legislation and collective or other agreements
C 5.3 Conflict resolution	<p>I 5.31 Every reasonable effort is made to resolve conflicts through fair consultation aiming at achieving agreement or consent.</p>	<ul style="list-style-type: none"> - Interviews with representatives of local communities, of unions and workers - Records of fora for participation (round-tables, committees, hearings etc.) - Records of ombudsmen, courts or similar institutions 	Convention No. 169 or relevant national legislation and collective or other agreements

APPLICATION OF THE SUGGESTED CRITERIA AND INDICATORS

The criteria and indicators in the summary tables above have been chosen selectively in an attempt to ensure that minimum requirements for core labour and social concerns are included, rather than to provide comprehensive coverage. The set is a good match with those retained by the CIFOR group as their “best bet”. As has been stressed above, the criteria and indicators are intended to apply to all types of workers, including self-employed and contractors as well as migrant workers.

It is the contention of the author that the proposed criteria and indicators apply with minor modifications at both the national and forest management unit level. They provide for a common base, yet leave sufficient room for adaptation to national conditions and local situations.

The indicators are qualitative, except for remuneration, but all are amenable to a clear yes/no judgement by a qualified professional. Assessment of the proposed set can be based on information readily obtained through interviews and observation during visits or through surveys as indicated under verifiers. The ILO texts or the relevant national documents serve as reference for definition and thresholds.

The sources provided and the discussion of the issues should enable national or enterprise level working groups to adapt or extend the proposed set where necessary. Adaptation should avoid the fragmentation and lowering of the proposed standards. Since all of the proposed criteria and indicators are based on texts agreed internationally in tripartite ILO fora, adaptations should rather seek to incorporate more stringent or more specific requirements where these exist in national law and regulation, collective agreements or based on the consensus of those developing the standard. They can be and, in a number of cases of existing standards have been, usefully supplemented by including aspects not covered in the proposed set or by imposing more stringent requirements. Where sources of standards do not exist, the ILO texts offer a substitute reference.

Likewise, it is important to maintain the coherence of the provisions and explicitly adhere to the international consensus and commitment enshrined in the ILO texts, even if not all aspects appear relevant in a given country. Otherwise, there is a risk that pertinent provisions are not applied even where they would be very relevant, on the grounds that their application would constitute a dual standard compared to other countries or firms. This is precisely what the present suggestion attempts to avoid.

One of the best ways to ensure that social and labour aspects are adequately covered in the definition and practice of sustainable forest management is to seek the active participation of employers, workers, contractors, local communities, indigenous peoples and other relevant groups in the formulation, implementation and monitoring of standards.

SOME INITIAL REACTIONS TO THE SUGGESTED SET

The reaction to the suggested criteria and indicators by PEFC and by FSC, currently the two biggest certification schemes in terms of area, has been very encouraging. The PEFC incorporated the seven core ILO Conventions into its certification standard in early 2001. The ILO Code of Practice on Safety and Health in Forestry Work is recommended a reference which should be considered when developing regional or national certification criteria and included in the PEFC's Technical Document.

The FSC had discussed the question at its Annual Conference in November 2000. Its secretariat has prepared a draft policy paper and a guide for certifying bodies including all proposed criteria and indicators. The intention is to ensure compliance with all ILO Conventions referenced. At the time of writing the documents were being circulated for comment. A revised draft is to go before the FSC Board in September 2001.

WHAT WILL CERTIFICATION DO FOR PEOPLE LIVING IN AND AROUND FORESTS AND WHAT NOT?

Certification has clearly helped to advance social justice in forestry. In forest policy

- It has contributed to putting people back on the map from which they had been swept by environmental and economic interests and to get recognition for the roles and interests.
- It played a major part in formulating a vision for the place of people in sustainable forest management and for the treatment they should receive for such management to be part of sustainable development.

On the ground:

- Certification will improve the welfare of people who depend on forests, provided it is done on the basis of adequate social and labour criteria and indicators applied by competent assessors.

The latter condition appears to leave to be desired and will probably require additional training for the staff of assessors.

To some extent certification creates standards that are more favourable to workers and local communities than national legislation. Almost as important of this complementary function to legislation is its role in enforcement. Effective labour inspection in forestry is extremely rare even in industrialized countries (ILO 2000). In some cases, the benefits of certification will therefore arise simply from the indirect enforcement of national legislation. Working and living conditions in forestry are often poor and sometimes deteriorating in developing as well as in industrialized countries (see for example Poschen 1997). Improvements in welfare can be therefore be expected in both regions. Some preliminary evaluations of certification impacts confirm this view.

The above achievements are significant and make the efforts and resources invested into certification worthwhile. Certification is not the “magic bullet”, however, neither for forests nor for people.

Certification can by definition only apply to managed forests and at the enterprise level. Currently some five per cent of the managed forests of the world are certified. Even if a much higher proportion were, this would do little to stop the degradation, destruction or outright conversion of forests. Managed forests account for a small and probably falling fraction of the total area. Managed natural and man-made forests are mostly located in North America and Europe, regions where the forest area has been growing and where management standards are close to those of certification systems. In other continents, very little natural forests is managed in a way that could be certified. Forests that could and in some cases already have been certified are plantations in Latin America, Australia, New Zealand and to a lesser extent Asia. Looking at present and future world trade patterns in forest products, it is apparent that certification reflects this situation. Timber destined for European and North American markets originating from some of the best managed forests in the world is getting certified. Timber from uncertified forests will have little difficulty to make its way into markets that are less socially and environmentally conscious than the European and North American ones. Certification is therefore very unlikely to reach the ones who would need it most.

Similar to its limitations with respect to forest loss, certification cannot resolve problems of social justice and disappearance of forest-based livelihoods that have macro-economic and wider social causes. An individual enterprise, even a sizeable one, can do little to remedy things like inequitable access to resources, to education, to health care or to political decision making. Regarding livelihoods for the individual firm there is often a trade-off between offering decent working conditions and pay, for example, and the number of jobs it can provide. Certification cannot resolve this dilemma. While a discussion of forest-based livelihoods is beyond the scope of this paper, it may be worth highlighting that a lot of people depend on forests as a livelihood of last resort. They are poor because they depend on forests and they know that forests cannot solve this problem for the majority of those concerned (see Poschen 1997). For a large proportion the way out poverty will be the way of forest-based livelihoods. Certification can help to make life better for those who wish to remain and perhaps most importantly, to make sure they had a part in the decisions affecting them.

IN CONCLUSION

The review of existing sets of standards for sustainable forest management, be they regional, national or for use in individual forest management units, reveals that they are almost always incomplete, usually imprecise and often inconsistent. Sustainable forest management is ultimately about people, not about trees. Standards that cover biological aspects such as biodiversity and nutrient cycles in great detail and neglect the functions of forests for society

and the social conditions for the continued existence and best management of forests cannot meet their intended objective.

Social and labour aspects need to be brought into focus to balance the current bias towards ecological and sometimes economic functions. It is encouraging that the FSC and to some extent the PEFC are incorporating the above suggestions into their schemes.

All avenues should be pursued to promote good social and labour practices in forestry: forest policy fora such as the regional “processes”, codes of forest practices, and voluntary initiatives such as certification. For the latter two consistency, harmonization and minimum standards are desirable. This paper has shown that much of the ground can be covered by using ILO texts to define criteria and indicators, to serve as reference for threshold values and verifiers.

Certification has already made a valuable contribution to policy discussions and is contributing to improvements on the ground for people living in forests or depending on them. It’s impact will, however, be limited because it can only address problems at the forest enterprise level and because the incentives will mostly attract firms with strong connections to western markets as well as with relatively high forest management standards.

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SECTION III

COMMUNITIES AND PARTICIPATION

THE ROLE OF CERTIFICATION IN COMMUNITY-BASED FOREST ENTERPRISE

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INTRODUCTION

This paper examines the interaction between market-oriented certification and community-based forest enterprise (CFE), using experience in Latin America as a point of reference. This region has seen the greatest expansion of CFE certification (a trend that shows no signs of diminishing). Not only are there more certified CFEs in Latin America than anywhere else in the world, but also a Mexican CFE has the distinction of being the first enterprise ever to adopt certification.¹

This paper is based on three case studies of certified CFEs in Bolivia, Honduras and Mexico. These enterprises have been selected to reflect the range of experience with CFE and certification in Latin America. Each case study examines the driving forces and expectations behind certification, the conduct and outcome of the inspection and verification processes, and the effects of certification on the environmental, social and economic status of the enterprise. Detailed background information on each case study, as well as details of case study methodology, can be found in Markopoulos (2000).

This paper is organised as follows:

- Part 1 provides a brief overview of the mechanism and purpose of certification.
- Part 2 provides an overview of CFE in Latin America, its nature and distribution, and the main social, political and economic challenges that it faces.
- Part 3 introduces and discusses the main elements of the debate about market-oriented certification of CFEs. The chapter surveys the status of CFE certification in Latin America and identifies some of the key issues arising from regional experience with certification.
- Part 4 presents the case studies of certified CFEs in Latin America. The case studies in this paper are condensed versions of the original case study reports. Fuller versions of each case study can be found in Markopoulos (2000).

¹ The Society of Ejido Forestry Producers of Quintana Roo (SPFEQR). See Table 1 for full details of certified CFEs in Latin America.

- Part 5 begins by discussing the findings from the case studies. Naturally, these findings are context-specific, but there are common themes that are addressed. The discussion places particular emphasis on the correspondence between the demands and opportunities of certification and the capabilities and needs of the enterprise. The chapter concludes by identifying the conditions under which certification could support sustainable CFE development.

1 CHARACTERISING CERTIFICATION

Certification independently verifies that the wood in a product originated from a forest (or forests) managed in accordance with certain standards. It is conceived as a voluntary procedure which buyers may choose to specify and which producers may choose to adopt. By providing information about the origins of a traded forest product, certification attempts to link market demands for products produced to high environmental standards with producers who can meet such standards. As such, it has the potential to act as a market incentive for better forest management.

In so far as certification relies on financial incentives to improve forest management, it may be characterised as a market-based instrument (MBI). MBIs are thought capable of internalising the costs of environmental protection with greater efficiency (and legitimacy) than traditional administrative regulation. In practice, however, the distinction between certification and a regulatory regime based on performance standards may be extremely fine (Markopoulos 1999). Both regimes offer producers a straightforward choice between meeting previously defined targets or facing possible penalties. In the case of certification, such penalties are exclusively financial (e.g. the possible loss of competitive advantage); in the case of regulation, they are mainly administrative or judicial.

If the costs of environmental protection (i.e. improved forest management) are to be internalised through the market, producers must be able to transfer the costs of certification to consumers through higher product prices or increased volume of sales. The available evidence suggests that price rises will not be significant and that increased market share will become the main mechanism for internalising costs. At this stage, however, it is uncertain how far such increases will be accommodated by the competitive reallocation of existing market demand between certified and non-certified producers (or between different classes of certified producers), or by the expansion of demand if certification restores consumer confidence in the sustainability of the international timber trade.

Although certification is nominally an MBI, the environmental objectives it encapsulates are determined not within a closed market system, but by open and participatory public debate. The market can, and does, signal which system of certification it prefers, but the underlying standards of forest management are determined by multiple independent stakeholder groups (including groups which may not participate formally in the market, or which may be isolated from the political mainstream). This contribution to the “democratisation” of forest policy processes is often portrayed as one of certification’s main non-market benefits.

2 BACKGROUND TO CFE IN LATIN AMERICA

Characterising CFE

Community-based forest enterprise, or CFE, is a subset of the activities usually encompassed by the term “community forestry”. These include the collection of fuelwood and construction materials, the provision of food and environmental stability for food production, and the generation of income and employment through the collection and sale of timber and non-timber products (Arnold 1992). In the case of CFE, the main focus of activity is defined as the collection and sale of timber products, possibly in conjunction with non-timber products.

CFEs differ widely in terms of their social and cultural context, systems of organisation, level of development and degree of market integration. The most advanced enterprises are large, vertically integrated operations that employ hundreds of full-time workers (Sánchez Pego 1995). Other enterprises may employ only a handful of part-time workers in a small portable mill operation. It is possible, however, to identify certain general characteristics that define CFEs and distinguish them from industrial harvesting systems (Padoch and Pinedo-Vasquez 1996; Salafsky et al. 1997):

- Resource rights are either owned by or assigned to the community (or a subset of its members). In industrial systems, forest lands or harvesting rights are held by companies whose owners or shareholders may live far away from the actual site.
- Members of CFEs typically live near the site of their enterprise, depend on the forest for other goods and services and place timber harvesting in the context of a wider land-use framework. In industrial systems, those involved in the logging effort may live either near the forest or far away from it.
- Harvesting by CFEs is generally on a smaller scale and less capital intensive than industrial systems. CFEs tend to rely more on labour than machinery and other capital-intensive technologies. These characteristics can give CFEs greater flexibility to change their production objectives and management patterns in response to fluctuating market prices, opportunities and problems.
- CFEs often seek to add value to raw materials on or close to the harvesting site. Industrial timber harvesting enterprises generally harvest logs which are transferred to large, centralised processing mills in cities or even abroad.
- The capital and profits of a CFE tend, of necessity, to be invested locally, whereas those of an industrial enterprise are easily moved to other localities or sectors of the economy. CFEs consequently have a greater incentive to maintain their forest stocks, although they may be more vulnerable to changes in interest rates and other macroeconomic fluctuations.

Brief overview of CFE in Latin America

In the past two decades, community-based forest enterprise has been recognised as a promising approach to forest conservation and rural development in the tropics (Rodríguez

et al. 1993; Ascher 1995). Support for this approach is based on two main assumptions. The first is that unless people living in or near the forest can obtain a satisfactory livelihood from it, and so value it above other uses, the agricultural frontier will continue to encroach into opened-up forest. The second is that CFEs, compared with their industrial counterparts, can generate proportionately greater social and economic benefits for rural communities (Arnold, Chipeta and Fisseha 1987; Brunton 1987; Blair and Olpadwala 1988; Richards 1993; Silva 1997).

Many CFE initiatives have been established in Latin America in recent years on the basis of these assumptions. The evidence from these initiatives shows that there have been both positive and negative experiences. Some projects have performed poorly in commercial terms, owing to financial, technical or managerial constraints. In other projects, particularly those involving indigenous peoples, the introduction of market pressures has given rise to social and cultural tensions (Chase Smith 1995; Gram 1997). Where forest enterprise has enjoyed commercial success, for example among the forest *ejidos* (agrarian communities) of south-eastern Mexico, the main contributing factors have been a high standard of technical assistance, aggressive marketing and processing strategies, local political support, strong community organisations and the development of an autonomous institutional framework (Richards 1997a).

The evidence from Latin America shows that CFE can be successful, given the necessary support and recognition. It is also evident, however, that CFE efforts have been watched more for the light they shed on matters of decentralisation, community participation and strengthening of civil society than on matters related to achieving sustained local growth. Consequently the economics of CFE as a business have been neglected and the importance of sound business and marketing strategies often underestimated (Alatorre 1992).

Social, cultural, political and economic aspects of CFE

Economic activity in many communities is organised at the family level. The extent to which individual and family interests can be merged to permit collective activity such as forest enterprise depends heavily on a community's endowment of social capital (Toulmin 1997). Strong leadership is also a crucial factor in fostering cooperation (Blair and Olpadwala 1988; Cabarle 1991).

The rules and institutions that a community establishes for forest enterprise may be based on new or traditional structures, or a mixture of both. Perceived weaknesses in existing decision-making procedures often lead to the creation of new structures, although traditional structures may carry greater authority and legitimacy. In the long-term, however, traditional structures may be overwhelmed by the demands of market enterprise. In a number of Mexican forest communities, the traditional political structures of general assembly and community commission have, through corruption and factionalism, lost control of forest enterprise to work groups and small production cooperatives (Wexler and Bray 1996; Merino and Alatorre 1997; Zabin and Taylor 1997; Maynard and Robinson 1998).

The root cause of many of the internal tensions engendered by enterprise development is the distribution of costs and benefits. If income generation is the main goal of CFE, profits may be divided among community members. If employment is the main goal, profits may be used to create jobs in the enterprise. Few communities invest all of their profits in enterprise growth. Income generation goals in particular can undercapitalise the enterprise, reduce salaries to uncompetitive levels and cause tension between the enterprise and the wider community (Oksanen and Rijssenbeek 1987; Snook 1987; López and Gerez 1993; Merino 1997; Zabin and Taylor 1997).

Supportive policies and a favourable political environment are crucial to CFE, but often lacking (ODA 1996; Poffenberger 1996; Richards 1997a). Weak, unstable or repressive governments, restrictive legislation and a policy bias towards industrial interests are among the factors that constrain development of CFE. Even where support for small-scale forestry is enshrined in national law, as in Honduras' Social Forestry System, governments may do little to support communities because their primary concerns are elsewhere, for example overseeing large-scale commercial logging (Ascher 1995). In such cases, donors and non-governmental organisations (NGOs) may be left to fill the resulting gap.

Among the elements of a supportive regulatory framework for CFE are secure property rights, appropriate business regulations, tax regimes, licensing requirements and financial services. Support for business associations is also necessary if CFEs are to be able to defend their interests in the political arena and participate in policy formulation. In Latin America, many of these elements are still either absent or underdeveloped because the economic policies of the past two decades have tended to favour large businesses over small ones (Holden 1996).

The status of CFE in Mexico, which arguably has the largest community-controlled forestry sector in the world, illustrates some of the economic constraints faced by Latin American forest communities. First, production and transport costs are high (Madrid 1993; USDA/FAS 1998). Second, the sector's industrial base suffers from over-capacity and obsolescence (Merino 1997). Post-war policies of import substitution and market protection removed the need for producers to make regular investments in production technologies. Third, CFEs lack business development or marketing strategies and make little effort to consolidate or expand their sales channels (Alatorre 1990; Madrid 1993). Last, a lack of cooperation with the private sector further reduces efficiency and raises costs (Zabin 1995).

Many of these problems can be attributed to a lack of technical or managerial expertise, or to internal organisational problems. The lack of investment in production or marketing also reflects an inherently risk-averse, needs-oriented business culture (Alatorre 1990; Garcia et al. 1994; Thoms and Betters 1998). Most CFEs, to use the terminology of Simon (1959, cited by Hornby, Gammie and Wall 1997), may be described as "satisficers" rather than "maximisers" - that is, they are conservative in their business objectives and strategies and do not continuously seek ways of improving performance and increasing returns.

3 EXPERIENCE TO DATE OF CFE CERTIFICATION

Potential costs and benefits of certification for CFEs

On the supply side, the uncertain economic status and conservative business goals of most CFEs would suggest only a limited constituency for a relatively new and untested market instrument such as certification. On the demand side, the nature of most CFE trading relations (either with price-conscious local markets or, more rarely, with socially conscious overseas markets) would suggest a limited need for the rigorous environmental accountability provided by certification.

Such considerations notwithstanding, certification of CFEs in developing countries has attracted a great deal of attention and support, and CFEs have been among the earliest participants in some certification programmes. Many of these early adopters, however, have been donor-supported development projects rather than free-standing enterprises. Support for certification of CFEs under the market-oriented FSC model has been based on several assumed benefits (Laban and van der Werf 1995; Heaton and Donovan 1996; von Kruedener 1997; Marijnissen 1998; Irvine 1999; Guillén 2000):

- **Improvements in markets.**

Certification can create new, possibly more valuable, opportunities in international markets, and so allow communities to increase the profitability of their forest operations, escape exploitative trading relations in local markets or avoid involuntary disposal of their forest assets to competing industrial interests.

- **Increased efficiency of management.**

The processes of inspection and verification can - even if a CFE fails to win certification - offer ideas or practical suggestions for improving management practices and administrative procedures. Certification can also provide a mechanism, or strengthen existing mechanisms, for monitoring, evaluating and reporting management impacts.

- **Leverage for finance and technical assistance.**

Certification can attract support from NGOs, donors or other parties to address technical improvements, training or other issues that arise from the certification process.

- **Instrument to prove responsible resource use.**

Certification can demonstrate responsible forest management to entities that may require such evidence, for example governments (if a community is managing public forest land), investors (if a community is seeking business partners) or environmental groups (if a community has to defend itself against anti-logging campaigns).

- **Increased political weight and bargaining power.**

The process of standards development can offer a public platform for communities to influence the development of certification programmes and, potentially, government policies. At the enterprise level, certification can lead to dialogue and negotiation with

other stakeholders, and so help communities to resolve forest-related conflicts or improve local attitudes towards forest-based enterprise.

The foregoing benefits are counterbalanced by a number of possible disadvantages (Blair and Olpadwala 1988; Laban and van der Werf 1995; Elliott and Viana 1996; von Kruedener 1997; De Camino and Alfaro 1998; Marijnissen 1998; Tolfts 1998; Scrase 1999; Thornber, Plouvier and Bass 1999):

- **Generic drawbacks of business intensification/reorientation.**
Any change in the complexity, sophistication or market outlook of forest enterprise (such as might be expected under certification) can put severe strain on traditional beliefs, authority systems and the compromises between farming and forestry work cycles and demands. Export activities can displace economic activities of more immediate importance, such as subsistence cropping, and may involve the substitution of capital for labour.
- **High costs of certification.**
The costs of certification include the direct costs of inspection and administration, and the indirect costs of improving management practices and gathering the information needed for verification (Simula 1996). To these may be added the costs of any promotional or marketing activities related to certification. Weak economies of scale mean that most CFEs are less able to absorb these costs than their industrial counterparts.
- **Inaccessibility of certified products markets.**
Most CFEs lack the specialist expertise and technical economies of scale needed to identify and serve international certified products markets. Consequently they will depend heavily on market intermediaries (such as producer cooperatives or business associations) to share the costs and risks of exporting. Such intermediaries, however, often do not exist or suffer themselves from a lack of resources, expertise or political support.
- **Limitations of certification standards and procedures.**
CFE across much of Latin America is still in its formative stages. Even in Mexico, forest communities are still working towards an autochthonous definition of sustainability (Jaffee 1997). Until such definitions crystallise, current CFE efforts will continue to evolve through multiple social and organisational forms. In this context, the practicality of defining, applying and verifying management standards for CFEs, or of maintaining those standards as enterprises mature, is open to question.
- **Lack of clear linkages between standards development and public policy processes.**
It is still unclear how any contribution to the standards development process from CFEs will filter into formal policy-making for CFE, or how governments will be able - given previous regulatory failures - to enforce and monitor any pro-CFE regulatory reforms that are based on certification.

In summary, the available literature suggests that certification could be of benefit to CFEs, but that only the largest and most advanced enterprises will have the necessary financial resources, business experience and market linkages to exploit this benefit. Other, less developed enterprises may find that the demands of certification exceed their ability to comply and their capacity to manage change.

Status of CFE certification

By May 2001, 22 certificates covering 600,378ha had been issued to CFEs in Latin America by FSC-accredited certification bodies (see below, Table 1). With only two exceptions (CICOL in Bolivia and FUNDECOR in Costa Rica) these certificates are all in Mesoamerica and were all issued by the Rainforest Alliance's SmartWood programme. The two leading countries, in terms of both number of certificates and certified forest area, are Mexico (9 certificates for 409,564ha) and Guatemala (6 certificates for 100,026ha). Certified operations in these two countries range in size from 2,693ha to 243,349ha, with a median value of 12,217ha¹.

Certified CFEs in Latin America exhibit a variety of organisational forms, ranging from concessions on public forest land in Guatemala to rural development projects in Honduras and free-standing enterprises in Mexico. In several cases, multi-community entities such as unions and cooperatives have been certified, although there is no evidence that such groupings were formed specifically for certification, or that they are becoming more prevalent. To judge from the limited evidence available, CFEs are using certification opportunistically, either in response to overtures from private companies or, more commonly, as part of NGO or donor programmes of support. The distribution of certified CFE, therefore, does not accurately reflect market demand or enterprise capacity to meet this demand.

In many cases, the expectation that certification would provide access to profitable international markets has not been matched by experience (De Camino and Alfaro 1998; Irvine 1999). Irregular demand, or a lack of capacity to meet existing demand, have affected many certified enterprises (IRG 1999). Closer analysis suggests that support for CFE certification has concentrated too heavily on issues of supply, rather than demand, and that more attention should be paid to market and customer needs (Thornber and Markopoulos 2000).

Irvine (1999) asserts that certification has allowed communities to streamline their administrative and managerial procedures, with long-term economic benefits in some cases. This claim is hard to corroborate given the lack of detailed, long-term economic studies of certified CFEs. Certainly the CFEs that have been certified for several years or more have made few economic gains. Inefficiency and corruption, for example, forced several members of SPFEQR to disband their enterprise and form work groups in the mid-1990s (Maynard and Robinson 1998).

¹ The median value is a more accurate indicator of individual community size than the average value because some certificates cover more than one community.

Table 1: Status of certified CFE in Latin America. Source: FSC 2001; public summary reports. (Part 1)

CERTIFICATE HOLDER	CERTIFIER	ISSUE DATE ^a	FOREST TYPE	AREA (ha)
<i>Bolivia (1 certificate)</i>			<i>Subtotal</i>	<i>52,000</i>
Central Intercomunal Campesina del Oriente de Lomerío (CICOL)/APCOB	RAlliance ^b	19/2/96	Natural	52,000
<i>Costa Rica (3 certificates)</i>			<i>Subtotal</i>	<i>18,132</i>
Asociación San Migueleña de Conservación y Desarrollo (ASACODE)	RAlliance	1/10/98	Plantation/Semi-natural	81
Fundación para el Desarrollo de la Cordillera Volcanica Central (FUNDECOR)	SGS ^c	14/2/97	Plantation/Natural	17,551
Fundación Tierras Unidas Vecinales por el Ambiente (TUVA)	RAlliance	1/4/97	Natural	500
<i>Guatemala (6 certificates)</i>			<i>Subtotal</i>	<i>100,026</i>
Asociación de Productores de San Miguel (APROSAM)	RAlliance	1/5/99	Natural	7,039
Comité Pro-Mejoramiento de La Pasadita	RAlliance	1/5/99	Natural	18,217
Cooperativa Bethel, R.L.	RAlliance	1/5/99	Natural	4,149
Cooperativa Integral de Comercialización "Carmelita", R.L.	RAlliance	15/12/99	Natural	53,797
Cooperativa La Técnica Agropecuaria	RAlliance	1/5/99	Natural	4,607
La Sociedad Civil de Impulsores Suchitecos	RAlliance	1/12/98	Natural	12,217
<i>Honduras (3 certificates)</i>			<i>Subtotal</i>	<i>20,656</i>
Cooperativa Regional Agroforestal, Colón, Atlántida, Honduras Ltda. (COATLAHL)	RAlliance	1/7/97 (1991)	Natural	8,750 ^d
Paya y Copén, Colón	RAlliance	1/2/99	Natural	5,898
Proyecto de Desarrollo del Bosque Latifoliado (PDBL)	RAlliance	1/7/97 (1991)	Natural	6,008

Table 1: Status of certified CFE in Latin America. Source: FSC 2001; public summary reports. (Part 2)

CERTIFICATE HOLDER	CERTIFIER	ISSUE DATE ^a	FOREST TYPE	AREA (ha)
Mexico (9 certificates)			Subtotal	409,564
Comunidad Indígena De Nuevo San Juan Parangaricutiro	RAlliance	2/00	Natural	14,300
Ejido Echeverría de la Sierra	RAlliance	1/5/98	Natural	3,000
Ejido El Encinal	RAlliance	1/11/99	Mixed-natural/ Plantation	7,161
Ejido Mil Diez	RAlliance	1/11/99	Mixed-natural/ Plantation	4,750
Ejido Pueblo Nuevo	RAlliance	1/12/00	Natural	243,349
El Ejido El Centenario	RAlliance	9/1/98	Natural	2,693
El Ejido Noh Bec	RAlliance	1/4/99 (1991)	Natural	23,100
Sociedad Civil de Productores Forestales Ejidales de Quintana Roo (SPFEQR)	RAlliance	1/8/95 (1991)	Semi-natural	86,215
Union de Comunidades Forestales Zapotecas-Chinantecas (UZACHI)	RAlliance	22/4/96	Natural	24,996
TOTAL (22 certificates)				600,378

^a This refers to the initial certificate from an FSC-accredited certification body. If applicable, the issue date (year) of an earlier certificate is given in brackets.

^b Rainforest Alliance SmartWood programme.

^c SGS Qualifor programme.

^d The published figure of 7,970 ha for COATLAHL is inaccurate because it omits one of the cooperative's member groups.

Political benefits from the certification process have so far been limited. Some CFEs have achieved quasi-political goals after certification, but the extent to which certification was a contributory factor is unclear (see below, Chapter 4). Other communities have participated in national standards development processes: their contributions are reflected in the resulting standards and institutions of certification, but otherwise have had little discernible impact on formal policy for CFE or small-scale forest enterprise. Certification has enabled some community groups to press for the recognition of their customary rights as a precondition for the certification of industrial concessions on community lands (Irvine 1999). This is a positive development, albeit one of limited relevance to communities that have chosen to manage their forest lands.

The role and influence of external groups

The experience to date with certification of CFE highlights the uncertain nature of any associated benefits. Although it is too early to judge the long-term impact of certification on

enterprise growth and development, its short-term financial, technical and administrative demands constitute a serious obstacle. A further obstacle is the uncertain nature of certification itself, which is still developing through political and commercial interaction, and which still carries a heavy burden of risk.

Those CFEs that have already been certified have benefited from several measures to spread the associated costs and risks. Some enterprises have used the group certification system, which unites groups of forest owners or managers under a single certificate and can create economies of scale in organisation, administration and inspection (FSC 1998). Other enterprises have benefited from subsidised fees, training courses and other forms of support offered by certification bodies such as SmartWood (Guillén 2000). In most cases, however, donors, NGOs and, to a much lesser extent, private companies have financed the certification process and borne much of the risk themselves.

These and other options for supporting certification of CFEs, such as special funds to defray costs, raise two important questions. First, what is the underlying rationale for supporting certification instead of legal reform, institution building, business development or any other action vital to CFE interests? Second, is the purpose of such support to strengthen CFE, or to promote certification? Put another way, does the high level of interest in community forest certification reflect a genuine belief in its importance to CFE, or it does it reflect the self-interest of the certification industry and the current priorities of donors?

These questions aside, the effect of external support on the priorities and performance of recipient enterprises continues to give cause for concern. Such support may enable communities to win certification, but in doing so it may obscure market signals and thereby distort the incentives for forest-based enterprise. Pressure from external sources may also force enterprise growth and encourage excessive risk-taking in the drive to meet certification standards. A case in point is the Sociedad Civil de Impulsores Suchitecos in Guatemala. With the help of a regional forestry development project, this group obtained a concession, began forestry operations and won certification all in the same year, 1998 (Rainforest Alliance 1999). Given that CFEs in neighbouring Honduras have taken up to 15 years to develop (Richards 1997b), the ability of the Suchitecos to manage a business, let alone cope with the demands of certification, must necessarily be limited.

4 THE EXPERIENCES OF INDIVIDUAL ENTERPRISES

The Lomerío Community Forest Management Project, Bolivia

Background

Situated in eastern Bolivia, in the Department of Santa Cruz, the canton of Lomerío is home to 25 Chiquitano communities with an estimated population of 5,300. Since 1986 these communities, under the direction of their umbrella organisation CICOL (Inter-Communal Peasant Central of Eastern Lomerío), have participated in the development of a vertically integrated sawmill enterprise designed both to generate material benefits and to secure legal recognition for long-standing territorial claims. Financial and technical support for this

undertaking has been provided by the NGO APCOB (Support for the Peasants-Indigenous People of Eastern Bolivia) and, latterly, by the Bolivia Sustainable Forest Management Project (BOLFOR). In February 1996, the Lomerío project was certified as “well-managed” by the Rainforest Alliance’s SmartWood programme.

Summary of certification’s impacts

High standards of management within the project, as well as new forest legislation that has imposed strict standards for inventories, plans and other tools of management, have limited the impact of certification on forest management practices. However, as part of a more general emphasis on conservation management, certification has obliged the project to prepare a protected forest area plan and take steps to reduce human disturbances such as fire-setting and hunting.

Certification identified debilitating faults in the social and institutional relations of the project. In addressing these weaknesses, the project has refocused attention on the community, rather than CICOL or any other entity, as the basic socio-political unit of forest management. Certification has also led to a redefinition of community roles and responsibilities in forest management and enterprise administration, and has emphasised the central role of the community in project decision-making. Indeed, without certification, it is likely that the conflicts engendered by enterprise development would have received far less attention.

Two of the Lomerío project’s main expectations of certification were higher prices and greater market security. With support from BOLFOR and several wholesalers and secondary processors (both in Bolivia and abroad), the project has found new export markets and substantial price premiums for several lesser-known timber species. However, several caveats apply to Lomerío’s market success. First, higher timber prices have not led to significantly higher community incomes, owing to the financial demands of the undercapitalised communal sawmill. Second, the administrative and managerial capabilities of the sawmill enterprise are limited, and the demand for certified timber is being met only with difficulty (Stocks 1999). Third, the extent to which higher prices are the result of certification *per se*, rather than BOLFOR’s market development work, is open to question.

Another of the project’s expectations of certification was that it would strengthen Lomerío’s petition for a forest concession (which had been refused on several occasions by the Bolivian authorities) by demonstrating the superior standard of forest management at Lomerío compared with competing private operators. Despite the apparent circularity in this reasoning (certification as a means of acquiring rights that are themselves required for certification), SmartWood decided to award certification on the condition that legal action was taken to obtain secure long-term exploitation rights.

To a large extent, this condition was overtaken by events in 1996. These saw the introduction of new forest law that guarantees exclusive harvesting rights to indigenous groups on duly recognised communal lands, or *tierras comunitarias de origen* (TCO). The project’s demand for a concession, therefore, was subsumed under a wider campaign for the designation of Lomerío as a TCO. In July 1997, the Bolivian government unexpectedly

acceded to Lomerío's TCO demand. The Chiquitano of Lomerío are now working through the legal requirements for formal registration of their TCO.

Although there is no direct link between certification and Lomerío's TCO demand, the board members of CICOL consider that the international publicity and goodwill generated by certification favourably influenced the outcome of their demand. Certification has certainly shown indigenous forest management in a positive light, and has given CICOL (and by association other indigenous organisations) a degree of moral superiority over private competitors (Kopp and Domingo 1997). The lessons learned during the course of enterprise development and certification at Lomerío will also be of value to other indigenous organisations in lowland Bolivia.

Conclusions

There can be little doubt that, without certification, the Lomerío project would now be in a critical state, or possibly even moribund. Certification has been instrumental in focusing attention on internal conflicts and organisational weaknesses, and has promoted the search for appropriate solutions. It has created new market opportunities for some of Lomerío's lesser-known timber species, and has placed the communal sawmill enterprise on a more stable economic footing. In the wider political context of indigenous control of forest resources, certification appears to have helped the Chiquitano of Lomerío in their long-standing struggle for legal rights and recognition.

These benefits, however, must be weighed against a number of actual and potential drawbacks. Lomerío is passing through a period of rapid change. The project's commercial expectations of certification are balanced by its expectations of improved relations with government and the recognition of land claims. If, and when, these claims are eventually satisfied, the priorities of the Chiquitano may change. Secure tenure may encourage the expansion of sustainable forest management but, equally, it may remove an important motive for such management (Laban, Lette and van der Werf 1996).

The way in which certification has brought social and organisational benefits also has its drawbacks. The problems of passive community involvement in the project were themselves tackled passively - not by Chiquitano institutions with their own resources, but by an externally financed foreign expert. Indeed, the Chiquitano had no choice but to agree to the intervention of a foreign expert, as it was requested by SmartWood and formed part of the certification process. Notwithstanding its short-term benefits, this type of passive interaction with certification may not necessarily foster a long-term commitment to change and improvement.

Campesino Forestry Groups, Honduras

Background

The *campesino* (peasant farmer) forestry groups that are the subjects of this study operate in the Atlántida Forest Region on the north coast of Honduras. Ranging in size from five to 50 active members, each group manages an area of publicly-owned forest under a usufruct agreement with the state forestry service (AFE-COHDEFOR). As part of this agreement,

the groups are expected to prepare and implement a five-year plan for the sustainable production of timber. Some of the groups market their timber through COATLAHL, a second-order cooperative established under Honduras' Social Forestry System. Other groups sell directly to local buyers with the support of the Broadleaf Forest Development Project (PDBL), a long-standing supporter of *campesino* forest management in the region.

Despite the high species diversity of the tropical broadleaf forests in the Atlántida Region, the groups concentrate on a small group of commercially-valuable timber species, including mahogany, redondo and Spanish cedar. Past attempts to promote the use of lesser-known timber species have been frustrated by a lack of product development and marketing capacity, competition from illegal logging and the domestic timber market's traditional preference for pine. The desire to create new export markets for lesser-known species was one of the main motives for pursuing certification. In 1991, the groups were certified as "well-managed" by the Rainforest Alliance's SmartWood programme. The groups were recertified in 1993 and 1996 (again by SmartWood). At present, 12 groups managing almost 14,000ha of forest are certified as "well-managed".

Summary of certification's impacts

Certification has served to consolidate, rather than raise, forest management standards. All of the groups have received external support for improving their management practices and planning procedures. Honduras' Agricultural Modernisation Law of 1992 also introduced minimum standards for management planning, which were reinforced by technical guidelines introduced in 1996. Certification has highlighted the lack of monitoring of management impacts on the forest ecosystem. SmartWood has called for growth studies to be implemented, but this demand is beyond the capacity of most groups and must be met by external research. Under the conditions of certification, the groups are also required to incorporate non-timber forest products into their management plans.

The lack of community participation either in group decision-making or in the distribution of income from timber sales was heavily criticised by SmartWood in 1996. All of the groups are now required to prepare and implement community participation plans. The issue of community participation was acknowledged by the main forest stakeholders before certification, but the exclusive nature of the usufruct agreement between AFE-COHDEFOR and the groups hampers any attempt to broaden community participation. Closer analysis also suggests that the assumptions underlying the certifier's demand for forest management to be opened up to the wider community are not supported by present social conditions. The *campesino* communities in the Atlántida Region lack the social cohesion necessary for successful communal resource management. Furthermore, any reduction in group control over forest management may jeopardise the many benefits offered by the groups, including their ability to function as an engine of local economic development.

The main driving force behind certification in 1991 was the desire of a local furniture export company to secure a source of sustainably produced raw materials for its markets in the United States. This led to the first certification evaluation and the creation of a commercial relationship between the company and the *campesino* groups that persists to the

present day. In terms of direct export marketing, however, the groups have never been able to exploit certification because they lack the capacity to process and market timber according to international standards. Only three shipments of certified timber have been exported since 1991. All were commercial failures characterised by long delays, high rates of wastage and the diversion of resources into satisfying restrictive export regulations. These failures have focused the groups' attention on consolidating their domestic markets and exploring regional markets.

Until the early 1990s, none of the groups had received legal recognition of the usufruct rights granted to them under Honduras' Social Forestry System. In order to rectify this situation, PDBL developed the concept of a legally-binding usufruct contract between the groups and AFE-COHDEFOR. Anecdotal evidence suggests that the eventual endorsement of usufruct contracts by government was prompted by the certified status of the groups.

In 1996, a forestry funding scheme established by PDBL to support group costs was frozen by a legal challenge from elements of the Honduran timber industry opposed to financial support for *campesino* groups. After the 1996 certification inspection, SmartWood called for the legal problems blocking funding to be resolved. An inter-agency committee convened by PDBL to examine other funding options subsequently obtained approval for a new municipal-level forestry funding scheme in 1998.

Conclusions

Despite some minor improvements in the legal and commercial aspects of forest management, certification has made little contribution to the main constraints faced by the forestry groups. Many of the effects of certification have either overlapped with donor work programmes or been duplicated by new regulatory measures. Several conditions have substantially increased the complexity of management planning and the corresponding reliance of the *campesinos* on external assistance. In particular, the demands for growth and regeneration studies, and management of non-timber products, seem excessive. In view of their limited capabilities, the groups can only be expected to use the best information that is available to them. Even if there are gaps in the understanding of broadleaf forest dynamics, it is unclear why the groups should be required to fill these. It is also unclear why the omission of non-timber products should be considered a weakness of management, particularly if such products are neither harvested nor damaged by tree felling.

The commercial relationships established with certified timber buyers have not always worked to the *campesinos'* advantage. Owing to their limited production and marketing capacity, the groups have derived little benefit from direct exports of certified products. Instead, they have provided a secure supply of certified timber to larger companies with the capacity to exploit overseas demand. PDBL and COATLAHL appear to have assumed (mistakenly) that certification in itself would create export markets for lesser-known species. Consequently, they have paid little attention to product or market development needs. This preoccupation with certification's commercial potential has diverted attention from its potential to enhance local management capacities. The groups have been isolated from the certification process, and lack a clear understanding of its associated costs and benefits.

SmartWood's call for forest management to be opened up to the wider community reflects a concern for the form, as much as the outcome, of such management. However, the call fails to acknowledge the legalities of usufruct contracts, and assumes a capacity for collective action that many *campesino* communities still lack. The question of an appropriate institutional base for forest management is a complex one, but the present group system appears to sit well with social differences and the institutional matrix within which forest resources are owned and managed. SmartWood's demand seemingly owes more to an internal vision of social improvement than it does to the realities of *campesino* society.

Given the limited resources of COATLAHL and PDBL, and the focus of both organisations on the domestic market, the rationale for continuing with certification is unclear. A more appropriate course of action would be to put forest management on a sound economic footing in the domestic market, and then allow the groups to decide whether to reapply for certification. Contrary to popular belief, there is evidence from Honduras that well-managed forest products operations can be profitable in a domestic market context (P. Martins, personal communication, 1998). The domestic market offers an opportunity for the groups to develop their skills and expertise, and improve their products, so creating a more secure economic base from which to consider exporting.

The Union of Zapotec and Chinantec Forestry Communities (UZACHI), Mexico

Background

The four Zapotec and Chinantec communities that constitute UZACHI ("the Union") manage almost 22,000ha of temperate pine and mixed pine-oak forests in the Sierra Juárez mountains of northern Oaxaca. Between 1956 and 1981, these forests were concessioned to a private (later nationalised) pulp and paper company and selectively exploited for pine. The communities regained control of their forests in the early 1980s, but were left with extensively degraded pine stocks. In 1989, they formed the Union to deal with a number of common forestry-related issues, one of which is forest restoration.

The initial driving force behind certification came from Rural Studies and Assistance (ERA), a local NGO and long-standing supporter of the Union. The leader of ERA (who has gone on to play a pivotal role in Mexico's national certification standards development initiative) recommended certification as a way of avoiding price competition from the cheaper pine imports expected under the North American Free Trade Agreement (NAFTA). In particular, he suggested that certification would allow the Union to develop markets for commercially less vulnerable, but lesser-known, broadleaf species. The Union decided to pursue certification on the strength of this recommendation, but was aware that certification could enhance its professional status and credibility and provide feedback on its management practices. In September 1996, the Rainforest Alliance's SmartWood programme certified the Union as "well-managed".

Summary of certification's impacts

SmartWood found no major faults in the Union's management scheme. The conditions of certification imposed on the Union are designed mainly to consolidate existing practices. However, SmartWood asked the Union to suspend pine regeneration fellings in mixed pine-oak forests because of the high wastage of oaks and other broadleaf species which lack local markets. The Union has failed to comply with this condition, not only because it conflicts with the organisation's primary objective of restoring pine stocks, but also because the expected markets for broadleaf species have failed to materialise (see below). The Union now sees certification mainly as a tool for monitoring and evaluating management impacts.

SmartWood's inspection found that the accountability and transparency of the community institutions involved in forest enterprise were generally good. However, the traditional practice of rotating managerial positions, although intended to increase training opportunities and prevent corruption, has added to inefficiencies in enterprise management. SmartWood asked that managerial staff remain in their positions for at least two to three years, but this condition has been poorly received. With only a few exceptions, all positions are still subject to regular rotation (which can be as frequent as once a year).

Internal constraints and changing market conditions have not only limited the Union's ability to penetrate certified markets, but also eliminated much of the early economic rationale for certification. The Union hoped that certification would create markets for lesser-known broadleaf species but, in the event, was obliged to find such markets as a condition of certification. Under a programme financed by the Good Wood Alliance, the Union developed a small range of office products made from oak. However, this effort failed to generate more than sporadic market interest and regular production ceased in 1997 when the programme ended.

The Union has also had little success in marketing certified pine timber. By early 1999, only three small orders for pine timber had been completed by members of the Union. One of the main reasons for such poor performance is local market growth. In Oaxaca, the impact of trade liberalisation under NAFTA was cushioned by the high costs of transport to southern Mexico and the devaluation of the Mexico peso in 1994-95. The expected price competition lasted only a short time before demand and prices for local pine timber started to rise. Fuelled by strong economic growth (more than 5% per year since 1995), this upturn in the local market has removed any need the Union may have had to find new market opportunities.

Technical limitations have also contributed to the Union's lack of marketing success. In truth, there has been no shortage of sales inquiries for certified timber. Market promotion by local organisations and a listing in SmartWood's directory of sources has generated interest from buyers in the United Kingdom and the United States. The problem, however, is that the Union does not have the capacity to meet this demand. Its members lack the drying and milling facilities needed to prepare timber to export standards. They also cannot afford the investments needed to open and maintain sales channels to overseas markets. Most importantly, however, they have neither the consistency nor the volume of production needed to satisfy current market demands. The Union is receiving sales inquiries for up to

3,000-4,000m³ of timber each month, yet its production is limited to less than a third of this amount by an internal aversion to environmental and market risk, and by a desire to satisfy only internal welfare needs through forest enterprise (profits are not distributed among community members).

The Union and its supporters believe that certification has had a favourable impact on its external relations, particularly those with government and donors. Certification does appear to have strengthened the Union's relations with Mexico's environment ministry, which oversees forestry development. For example, the ministry has poached the Union's technical director to head the field office of a regional World Bank project (on a part-time basis), and has asked the Union to give seminars on forest management and certification as part of the same project. The Union has also secured financial and technical support from several donors since winning certification, and has played an important role in Mexico's certification standards development initiative. Although the true impact of certification can be questioned (Union members have always worked hard to cement their external relations), it has undoubtedly enhanced the Union's image and confidence as a leading local CFE.

Conclusions

In terms of the sophistication of its management practices, the amount of external support that it has received, and the strength of its commitment to sustainable forest management, the Union is unlike many other community forestry organisations in Oaxaca. It is these factors, however, that have contributed to the Union's status as a certification pioneer. Its relatively advanced management system has allowed the Union to meet the requirements of certification without major adjustments. The external support has removed much of the cost and risk of certification. Lastly, the Union's commitment to high standards has sustained its faith in certification despite limited financial benefits.

Such considerations may explain why, out of 73 CFEs in Oaxaca with temperate forest holdings², only the Union is certified. Other elements of the Union's experience, however, may be more relevant to the question of certification in Mexico. First, certifiers have shown a willingness to intervene in traditional practices such as the rotation of managerial posts. Such traditions may carry the legitimacy of customary law, but may fail to meet the criteria of efficiency dictated by certification standards. Second, certifiers have seen fit to address issues that, strictly speaking, lie outside their remit (SmartWood imposed two conditions that call for the development of promotional materials and a marketing strategy for certified products). Third, and perhaps most important, certification has created market demands that conflict with local production philosophies. The Union might be able to meet the demand for certified timber if it harvests 100% of its potential yield, yet for social and cultural reasons it is unwilling to countenance such a level of production.

The only way for the Union to overcome its production constraints - without compromising its production philosophy - is by cooperating with other forest communities or with private enterprises. In fact, the Union is planning to expand its membership in the

² According to the World Bank (1997), 236 communities in Oaxaca have enough pine-oak forest to sustain commercial exploitation. Of these, 43 harvest timber and 30 harvest and process timber in their own sawmills. The remainder either sell standing timber or do not manage any commercial extraction.

near future, but for political, not economic, reasons. From the point of view of certification, cooperation has the added disadvantage of requiring each partner to meet the certification standard before it can contribute to production. The question of private partners is also an extremely sensitive one, given the independent nature of the Union and the adverse experiences of its members during the concession era. Nevertheless, some of the community members interviewed for this case study expressed an interest in forming a joint venture with a private enterprise if it could reduce the associated risks of production and marketing.

5 CONCLUSIONS

Which communities?

The evidence collected in Bolivia, Honduras and Mexico, although it provides only limited opportunities to generalise, does suggest that CFEs in Latin America may have little use for certification oriented towards export markets, given their characteristic business goals and market linkages. The case studies portray enterprises that have generally failed to capture the added value represented by certification, either because they lack the skills or resources to penetrate certified markets or, as is the case with UZACHI, they are prevented from taking the necessary steps to enter such markets (e.g. increase production) by social and cultural considerations.

If enterprises such as UZACHI, which have access to external finance and technical support, derive few commercial benefits from certification, the outlook for the rest of Latin America's CFE is not promising. Notwithstanding the availability of outside support, it does seem likely that only the largest and most highly capitalised enterprises will have the necessary capacity or motivation to compete in certified markets. However, even in a country such as Mexico, where CFE has grown most rapidly, such enterprises account for no more than 5-10% of the total number of active CFEs.

A number of options exist to improve community access to certified markets, one of the most promising of which is sector-level cooperation. Cooperatives, associations, joint ventures and other forms of collective enterprise may be able to amass the capital and expertise needed to enter certified products markets. The collective approach, however, has certain implications. First, it must be driven by demand if it is to create concrete market opportunities. Second, the positive effect of sector-level cooperation on the competitive status of CFEs argues for its adoption as a general measure of support, not one confined to certified enterprises. The same observation can be made of any measure to improve community access to certified products markets. If the measure can improve market competitiveness, then why not adopt it for all CFE initiatives, certified or otherwise?

The influence of outsiders

The influence of outsiders is apparent at every stage of the certification process, from planning and inspection to compliance. There is no reason to believe that this influence will diminish as certification develops. Few CFEs are able to respond to certified market

demands without the aid of outsiders. In fact, few CFEs respond predictably to price signals or any other type of external incentive. The economic behaviour of most enterprises is governed not by the market, but by the internal structures and social relations of the community. For these reasons, donors, NGOs and other third parties are likely to play a important part in introducing and driving certification of CFEs for some time to come.

As the case studies show, outside support for certification can have unintended consequences. Where outsiders have had almost complete control over the certification process, as in Honduras, their influence has skewed local perceptions of the costs and purpose of certification. In Bolivia, external intervention has reduced the heuristic value of the certification exercise, and has encouraged community members to accept passively the process of compliance.

As noted in Chapter 3, CFEs have been among the earliest adopters of certification, even though it carries significant risks. The case studies confirm that CFEs have been able to lead in this field because much of the risk associated with early adoption has been borne by third parties. The drawback to this approach, however, is that it introduces an element of moral hazard. Any community would be willing to embark on a risky venture if it knew that, should the venture fail, the investment of a third party would be lost, not its own.

Apart from the questionable practice of expending limited development funds on high-risk measures such as certification, there is also the question of whether communities should be encouraged to take excessive risks. Of course, with enough outside support, a CFE could achieve almost anything. The point, however, is not what an enterprise *could* do if it had the support, but what it *should* do. Notwithstanding the enthusiasm of many donors and NGOs for certification, the truth is that it may not necessarily be the best or the most appropriate course of action for many CFEs.

If external assistance for CFE certification is to be offered, then it should at least be based on loans and other types of conditional finance, rather than subsidies. Subsidies are sometimes justified by portraying communities as “victims” in need of special support. This and other pro-subsidy arguments ignore two important facts. First, many communities are prevented from exploiting their forests not by external injustices, but by internal conflict and poor organisation. Second, subsidies work against efficiency and quality control, both of which are common weaknesses of CFE (and the former, as the case studies show, is a recurring theme of certification inspections).

Capacity for self-help and continuous improvement

Certifiers have imposed a large number of conditions on the enterprises in this study. Many of these conditions have exceeded local capabilities and have necessitated external intervention. Notwithstanding the intentions behind such conditions, their effect has been to reinforce the dependence of the enterprise and degrade its capacity for self-help. Certifiers, ideally, should encourage CFEs to find their own solutions to management problems, and avoid making demands that necessitate outside support. This approach to compliance would increase the flexibility of certification, and perhaps reduce its indirect costs.

Political and economic context

The findings of the case studies suggest that certification may offer indirect political benefits to CFEs, primarily an increase in their status and credibility, and consequent bargaining power. Such benefits, however, may not be enough in themselves to justify the cost of pursuing certification. At the national level, certification initiatives can provide a forum for public consultation on forestry issues. This forum, depending on the concerns or ambitions of a CFE, may offer a suitable platform from which to influence the opinions of other forest stakeholders. UZACHI, for example, has figured prominently in Mexico's national certification initiative.

The role of certification in political and legal reform aimed at strengthening CFE, and the effect of certification compared with the effect of such reform, are difficult to gauge on the basis of this study alone. In a country such as Honduras, where public forest policy processes are virtually moribund, a national certification initiative could create space for stakeholder dialogue and learning. Elsewhere, however, the role for certification is less clear. In Mexico, for example, CFEs hold significant economic power and are well represented in state and federal forest policy fora. From the narrow standpoint of CFE interests, therefore, a national certification initiative may not be the most effective means of pursuing further political and legal change.

Although the importance of certification will differ from country to country in Latin America, the importance of political and legal reform remains constant. The first priority of the international development community, therefore, must be good forest policy. Donors must guard against overenthusiastic promotion of certification, or any moves to tie development assistance to certification. Such moves could create the potentially divisive impression that certified CFE is "good" and uncertified CFE is "bad". In fact, all attempts at sustainable CFE development, certified or otherwise, deserve equal support and recognition.

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ACRONYMS, ABBREVIATIONS & DEFINITIONS

AFE-COHDEFOR	Administración Forestal del Estado-Corporación Hondureña de Desarrollo Forestal (State Forestry Administration-Honduran Forestry Development Corporation)
APCOB A	Apoyo Para el Campesino-Indígena del Oriente Boliviano (Support for the Peasants-Indigenous People of Eastern Bolivia)
APROSAM	Asociación de Productores de San Miguel (San Miguel Producers Association, Guatemala)
ASACODE	Asociación San Migueleña de Conservación y Desarrollo (San Migueleña Conservation and Development Association, Costa Rica)
BOLFOR	Bolivia Sustainable Forest Management Project Campesino peasant farmer
CFE	Community-based forest enterprise
CICOL	Central Intercomunal Campesina del Oriente de Lomerío (Inter-Communal Peasant Central of Eastern Lomerío)
COATLAHL	La Cooperative Regional Agroforestal, Colón, Atlántida, Honduras Ltda. (Regional Agroforestry Cooperative of Colón and Atlántida, Honduras Ltd.)
Ejido	form of tenure constituting a land grant for usufruct to a population

	group (Mexico)
ERA	Estudios Rurales y Asesoría Campesina (Rural Studies and Assistance, Mexico)
FSC	Forest Stewardship Council
FUNDECOR	Fundación para el Desarrollo de la Cordillera Volcanica Central (Foundation for the Development of the Central Volcanic Mountain Range, Costa Rica)
ha	Hectare
m3	Cubic metre
MBI	Market-based instrument
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organisation
PDBL	Proyecto de Desarrollo del Bosque Latifoliado (Broadleaf Forest Development Project, Honduras)
SGS	Société Générale de Surveillance
SPFEQR	Sociedad Civil de Productores Forestales Ejidales de Quintana Roo (Society of Ejido Forestry Producers of Quintana Roo, Mexico)
TCO	Tierra Comunitaria de Origen (Indigenous Territory, Bolivia)
TUVA	Fundación Tierras Unidas Vecinales por el Ambiente (United Lands for the Environment Foundation, Costa Rica)
UZACHI	Union de Comunidades Forestales Zapotecas-Chinantecas (Union of Zapotec and Chinantec Forestry Communities, Mexico)

CERTIFICATION OF COMMUNITY FOREST MANAGEMENT

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INTRODUCTION

Certification of good forest management was initially proposed as a market incentive to promote sustainable development. It is frequently seen as a tool to help consumers to make ethical choices in their purchasing decisions and buy products from proven well-managed forest, thus promoting the environmental and social improvements in the world's forests (Elliott 1999).

While certification is broadly recognised as the most successful and innovative forest policy tool of the 1990s, recently several authors have raised questions about the role of forest certification in sustainable development, "sustained economic growth", poverty alleviation, tropical forest conservation and its real benefits for local communities and indigenous peoples (e.g. Markopoulos 2002; Bass et al. 2001). It is worth framing this questioning in the context of past experiences. Concerning benefits to communities and indigenous, work on community forest management has taken place during the last 30 years at least, long before certification was proposed. Lessons from this experience need to be taken into account.

During the 1990s, major developments and efforts to strengthen the implementation of community forest management took place. The post Río forest policy debate has been characterised by the reflections on the interrelations between forests use, livelihoods and poverty alleviation, access to resources and equity, community participation and governance, globalisation and the role of national governments. Community forest management has been recognised as an important means for improving the quality of life of communities, while at the same time conserving forest and biodiversity. A broad array of approaches has characterised projects related to CFM:

- from the transfer of governmental power and responsibilities to communities (e.g. joint management initiatives, co-management agreements and laws) to the allocation of public forest lands and resource users' rights to communities as common property.
- from the recognition of traditional practices and knowledge, to the regulation of resources' access and benefits sharing.

Numerous experiences of community management have been assessed and a number of lessons learned, resulting in a growing literature on the subject (Fisher 1995; FAO 2000; Arnold 2001; Colchester 2001).

This paper

- reviews some issues related to community forest management
- puts forest certification in the perspective of sustainable development and,
- while listing most common problems identified recently with community forest certification (CFC), brings these in parallel with the general issues surrounding community forest management in general.

Doing so, the growing paradigm that there should be market and non-market certification is questioned. The two last sections spot two main approaches in the current analyses of CFC and, as conclusions, offer some suggestions to improve the effectiveness of CFC.

COMMUNITY FOREST MANAGEMENT

The end of the 20th century has seen a great emphasis in the Liberalisation and Structural Adjustment policies, which are central reasons for the reduction of the size and role of the governments (FAO 2001). This policy context has framed most development projects, including those related to communities. This has entailed:

- decentralisation of the management of forest reserves to local communities
- impetus of co-management / collaborative management arrangements
- devolution of land

Very important international efforts and aid have focussed on strengthening these regimes, building capacity in local communities, development of approaches to participation tools and methods, conflict management techniques etc.

An in depth analysis of community forest management falls outside the scope of this paper. However a large body of literature assesses the effectiveness of these policies on improving and securing livelihoods. A review of recent publications taking stock of nearly 30 years of experience related to community forest management shows that some general and recurrent issues have been identified. The general conclusions are:

- participatory management approaches are not empowering people. They are informed rather than participants of decision-making process (Agrawal and Ostrom 1999 in Arnold 2001; FAO 2000)
- devolution seems to be mainly implemented when is the cheapest strategy to pursue management SFM. Decentralisation is limited (FAO 2000) and becomes a means to give away responsibilities without the means (Arnold 2001)
- governments fail to provide the appropriate policy, institutional, legal and regulatory frameworks (appropriate enabling environment), particularly in relation to community rights and access to forests (Arnold 1998; FAO 2000; Colchester 2001)

The general context in which community forest management projects take place, as well as the issues encountered in these projects need to be remembered when assessing the effectiveness of community forest certification.

FOREST CERTIFICATION AND SUSTAINABLE DEVELOPMENT

The Rio process (UNCED 1992) replaced the previous economic-centred paradigm of “sustained economic growth” with one of “sustainable development”. This identified the need to incorporate the following aspects in the international environmental policy:

- the right to development to meet equitably the needs of present generations without compromising the ability of future generations to meet theirs (WCED 1987, Rio Declaration, Principle 3 UNCED 1992a)
- the integration and interdependence of environmental protection, social and economic development (Rio Declaration, Principle 1 and 4 UNCED 1992a, Forest Principles, Principle 2b and 3c UNCED 1992b, Agenda 21, Chapter 8, UNCED 1992d)
- the principle of intergenerational equity and responsibility, which implies managing forest resources and lands in away that conserve all forest products, values and services (Forest Principles, Principle 2b UNCED 1992b and Article 2 of the Convention on Biological Diversity)
- incentives for well managed forest in incorporating environmental cost and benefits (Forest Principles, Preamble paragraphs e and f, Principles 4, 13b, 13c, 13e UNCED 1992b)
- stakeholder participation in decision-making processes (Rio Declaration, Principle 10 and 22 UNCED 1992a, Forest Principles, Principle 2c and 2d UNCED 1992b)
- national sovereignty and respect for local conditions (Rio Declaration, Principle 2 and 11 UNCED 1992a, Forest Principles, Principle 8d UNCED 1992b)

In 1997 the overall revision of agenda 21, realising that the progress in such integration had been limited, adopted additional strategies. It affirmed that “growth can foster development only if its benefits are fully shared. It must be also guided by equity, justice and social and environmental considerations” (United Nations 1997, paragraph 23).

This debate introduced a fundamental change from traditional views in that it enshrined “equity” (between generations, regions, genders, etc.) as an intrinsic concept of sustainable development.

Forest certification, as a tool to promote sustainable development, must reflect these elements and thus cannot be a mechanism to bring market benefits only, but also all those related to social and equity benefits.

As new certification systems try to reach the market, more and more questions are raised about their merit, integrated values and the processes that should ensure their credibility.

Environmental NGOs have recently published in depth studies on the structures, quality and performance of the key competing systems (FERN 2001). Their conclusion is

that certification under the FSC system is the only one that has the minimum acceptable set of values, and the standards and procedures capable of producing the desired changes on the ground. An analysis of the merits of each certification initiatives falls outside the remits of this paper.

COMMUNITY FOREST CERTIFICATION

Community forest certification (CFC) has raised a significant amount of interest around the world because it is used in many projects, as a mechanism to improve community forest management and to contribute to poverty alleviation. As a consequence, much research and many documents discuss the economic, social and environmental impacts, both positive and negative of certification. Substantial assessments of community experiences have appeared (see Annex 1 & 2). The cases reported have been certified under the Forest Stewardship Council's system and its Principles & Criteria (FSC 1999).

A general trend in the literature on certification and communities is to recognise that certification is still a relatively new activity, for which experience is gained while practising it. Most of the current projects are small-scale pilot cases. Nevertheless, experience is building up and lessons learned by communities and other practitioners in these processes are starting to be widely available (FSC 2000; Anon 2001). As a result of the youth of the tool, studies older than 3 to 4 years were mostly based on projections and may be of limited relevance to the current debate.

It is generally accepted that communities have benefited and are benefiting from certification in many ways as discussed below. However, it is also generally accepted that the initial expectations from communities and their supporters were unrealistic.

The extent to which communities benefit from certification varies from one case to the other. Markopoulos (2002), Irvine (2001) and Robinson (2001) coincide in identifying some of the reasons for this disparity:

- the degree of social and institutional organisation of communities (individual, household, communal, co-operatives and other associative forms, etc.)
- their experience in timber production NTF production and/or agro-forestry, commercial experience
- their capability to access to national and/or international markets,
- their forest management level
- their degree of dependence from subsistence or market economy or a combination of them
- their leadership, technical, commercial, business and managerial experience
- their different aspirations and needs
- the history of local markets
- the different degree of recognition and support by governments, institutions, etc.

This experience is not very different from what has traditionally occurred in other fields such as in agriculture, fisheries, etc., in which poor communities from developing countries, marginalised, with low capacity and education have engaged in new productive activities.

Colombia, for example, is the World's second coffee producer, although holdings are numerous and small (The Economist 2001). Through trials and errors, these smallholders organised themselves into a very efficient organisation that markets coffee world wide. This has taken time. Similar examples can be found for soybean (Bolivia), asparagus (Costa-Rica), rice and sugar cane (Colombia), etc.

There may be a lesson for CFC, though it is obviously different from agricultural production: time is essential to develop mechanisms that are adapted to communities in developing countries.

The contextual and cultural differences mentioned above imply that there are successful cases where a whole range of benefits materialise and many less successful ones, due to poor economic and commercial performance. The lack of economic benefits creates frustration and makes the cost of certification difficult to bear, although other social and political benefits are achieved.

STRENGTHS AND WEAKNESSES OF COMMUNITY FOREST CERTIFICATION

Researchers and practitioners in Latin America feel that changes generated by forest management certification in the tropics, and in community forest management in particular have not been analysed in a satisfactory manner yet. This includes changes that have occurred on the institutional strategies and policies of different stakeholders (Anon 2001, Viana 2001).

Between the end of 2000 and the beginning of 2001 two important meetings discussed the pros and cons of community forest certification: the FSC Annual Conference (FSC 2000) and the Santa Cruz Workshop (Anon 2001) on community forest management and certification in Latin America. These meetings brought together a broad range of stakeholders to evaluate the current situation of experiences, limitations and opportunities with CFC, and the lessons learned.

Identified strength of CFC include:

- increased consciousness about interrelation and values of natural resources and culture
- increase income and benefit sharing
- new incentives for the consolidation of communities' social organisation
- new incentives for better working processes
- increased prestige and recognition as communal organisations
- new incentives to improve forest practices.

Notwithstanding the debate whether or not benefits are proven, and the extent to which they have materialised, there are clear indications that the expectations linked to international

market advantages have often not been met. The meetings identified a set of limiting factors within communities for the success of CFC including:

- difficulties to reach certified markets, or capacity to meet requirements of the demand on quality / quantity and maintain their market space
- lack of business development and limited administrative structures
- difficulty to find funds to meet the cost of certification
- low capacity to generate added value locally
- lack of management plans

External limitations include:

- lack of understanding of social implications, co-operation and support from private sector, retailers, intermediaries
- lack of policies, favourable political environment and governmental support
- low access to information and promotion of certification
- emphasis on timber products only
- lack of recognition and acknowledgement of the role of community forest management
- lack of research, training and transfer of technology
- certification procedures not well adapted to communities realities

The list of issues identified in relation to CFC needs to be put in parallel with the issues encountered with CFM in general, as mentioned earlier. There is an evident overlap. This suggests that both approaches work under the same legal, political and economic constraints. This makes it worth questioning whether these issues are not wrongly attributed solely to Community Forest Certification, instead of being the reflection of the common structural environment in which both CFM and CFC operate. Furthermore, recognising that certification cannot have an impact on macro economic tendencies such as globalisation and the effect of structural adjustment policies, it would be worth analysing if, where and how certification could act as a tool either to harness some of these trends in favour of communities, e.g. by helping communities to respond adaptively to them, or play as a buffer to minimise their impact.

STRATEGY AND RESEARCH NEEDS

There is a general recognition that a number of actions/strategies would allow a better realisation of benefits for communities. These include:

- ensure community participation and integration of traditional knowledge in the standards development process to really influence forest policy decision-making
- diversification of forest management benefits
- development of methodologies for monitoring and evaluation, including as safeguards when forests lands is returned or allocated to communities

- getting specific strategies to attain the particular incentives from CFC (e.g. promotion of local markets)
- improve the use and perception of CFC as a complement to public policy
- building alliances with different national, international and local actors
- better support to communities in identifying their needs/vision, accompanying their processes and targeting the satisfaction of the whole range of community expectations
- reduce certification cost
- develop supportive legal/policy framework, including land tenure, financial and fiscal policies
- capacity building and strength of local communities /institutions, including local certifiers
- development of and access to local markets for a diverse range of forest products, according to community needs
- promotion added value, lesser known species and NTFP
- promote communities interchange of experiences

Additionally, a certain number of key research needs have been identified by practitioners of CFC, including:

- elaboration of methodologies for incorporating traditional knowledge, social forestry and community development concerns (e.g. low input certification of low-input management systems) in the standard development and certification processes.
- guidance on certification of NTFP. Models for gaining economic benefits from and enhancing markets for NTFP
- guidance and best practices to link small-scale and communities producers to markets
- adapting C&I identified at the national level to communities
- guidance to achieve adaptive management, in a collaborative mode trying to work with a variety of stakeholders and different groups within communities (women, marginalised ethnic groups, etc.)
- categorisation of forest communities that takes into account organisation, culture, history, tenure, social complexity, market involvement, regional patterns, legal structures, etc.

MARKET OR NON-MARKET BASED?

Some authors tend to differentiate between “market” and “non-market” driven certification. However, case studies show that this distinction is not a preoccupation for communities and local actors.

Arguably, “market” and “non-market” certification is a terminology proposed by researchers from developed countries. The assumption is that “market driven certification” is to attain international markets, what most local communities have not the capacity to do, or which may have negative impacts on them. This attitude may be felt “paternalistic” by

local actors and communities that are trying productive alternatives to improve their quality of life, based on the a sound use of natural resources. This implies democracy, empowerment of civil society, participation and decentralisation, among others, and not only to “sustain local growth” (Anon 2001).

Practitioners at the local level, clearly state the importance of certification in providing incentives to community forest management (Viana 2001, Rezende de Azevedo 2001, Pierront 2001, personal communication and Robinson 2001). There are now more evidences that certification is catalysing changes in tropical forest management (Viana 2001).

However there are crucial challenges to overcome to ensure that communities receive all the potentials benefits of certification. Many of those challenges come from the tactical and strategic choices taken by the certification movement in its early days to get certification up and running. Because of the political setting under which certification was developed the activities of many certification stakeholders concentrated initially in ensuring its viability by promoting market relations and mechanisms. The most important efforts have been invested in bringing timber and industrial forestry under certification.

This strategy has been successful for positioning certification in the first line of the international forest agenda and has thus enabled real improvements on the ground. However, as pointed out by Irvine (2001), it is very important to analyse the alternative trajectories of “different certification processes, and their implications for developing an overall certification system that is well adapted to the needs of the diversity of communities”.

A common characteristic of the cases reported in the literature is that there is no clear-cut between economic, social/political and environmental incentives behind these projects. Generally, communities see in certification a mechanism to improve their quality of life, which involve *inter alia*:

- improvement and getting recognition of their forest management practices
- insurance or maintenance of forest land use rights/land tenure
- empowerment and social recognition
- community participation in decision making
- training and capacity building
- attracting donors support
- getting economic benefits to attend their need
- market access and better prices

Many communities expect to reach green international markets. Even in cases where this has not been achieved they see the process as enriching enough to be worth pursuing, with the hope that economic benefit will eventually come. However, local actors are concerned that it will be difficult to maintain the long-term interest of communities in certification, in the absence of lasting economic benefits (Pierront 2001, personal communication).

Another characteristic is that not all communities see certification exclusively as a timber production activity. For many, it is a way to ensure multiple use of the forest, including a diverse range of Non-Timber Forest Products (NTFPs). Although most of the

early-certified communities where aimed at timber production, there is a growing number of community forest management and certification projects where NTFPs and a whole range of social, political and legal incentives play a central role (Rezende de Azevedo 2001).

To view CFC as an international market instrument only may be a narrow point of view. The studies mentioned above suggest that, communities see it much more in a context of sustainable development. Evaluating the achievements of CFC in terms of international market benefits only does not render justice to the wide range of expectations that communities have towards this instrument nor to the array of potential benefits.

Thus arguably, the distinction between “market” and “non-market” certification is of little practical use for researchers and practitioners, nor for those looking for alternative ways to strengthen current efforts. Another issue is that specific incentive mechanisms require specific approaches and activities to ensure the desired outputs. A balance is required in each project between creating economic, environmental and social incentives in addressing local needs and different cultural contexts.

ANALYSIS OF ANALYSIS

TWO CATEGORIES

The review of literature about CFC carried out for this study reveals that it can be put into two broad categories:

1. Analysis reporting lessons being learned in community forest certification, and deeming that the currently available system, while needing serious adaptation, the development of action oriented and adaptive tools/mechanisms and the implementation of an efficient capacity building programme, can provide substantial benefits to communities and improve forest management.
Studies and/or reports in this category have been made either by the communities themselves, by social scientists or local practitioners, both from developing and from developed countries. It is worth noting that all studies made by the affected communities belong to this category. Proceedings of seminars held in the concerned regions also belong here.
2. Analyses that deem problems are too important to be solved within the existing system and therefore recommend alternative approaches. This includes the call for donors not to engage in CFC, but rather to focus back on the broad framework for improving forest policy, legislation and forestry institutions, and to support to the traditional “development” projects. The assumption is that certification may be efficient only once different institutional stages are in place. These approaches seem less action-oriented to solve the problems at the local level.

In any case, two main facts remain:

- many communities are engaged in certification and intend to continue to do so, but have worries about long term financial resources to sustain this involvement.
- community forest certification has issues of its own that need to be resolved to maximise certification's potential to contribute to poverty alleviation.

Institutional reinforcement and certification could, and should be complementary approaches. While certification can work more efficiently within a stable and well-defined institutional and legal framework, it has proven to be able to fast track legislation changes (Bass and Simula 1999; Elliott 1999). External actors, such as donors could reinforce this feedback loop, taking into account the lessons from the history of international development aid, which is full of examples where funds for work at the institutional level have been used less than efficiently. Frequently these funds have not resulted in significant improvements at the local level.

NORTHERN ASSUMPTIONS

One aspect worth noting is that the conclusions of some evaluations are permeated by Northern assumptions. For example:

1. 'Providing external assistance and economic support is to portray communities as victims.'

However, those practices are very common in many northern countries. In some European countries, the forester's associations pay the cost of certification. Direct or indirect economic support to producers, categorised as "economic incentives", is also a very common practice and one that has produced strong debates between Europe and North America, and USA and Canada.

2. 'The problems encountered by communities to conserve and use their forests have nothing to do with injustice, but only with poor organisations and internal problems.'

This assumption overlooks the root causes of those problems, such as marginalisation in social and economic terms, the very central issue of forests lands access, tenure and rights, unequal terms of national and international trade, more recently globalisation and structural adjustment policies, amongst others.

3. 'The influence of outsiders from communities such as certifiers, donors and NGOs is detrimental'.

The assumption here is that communities' capacity for self-help will increase alone. While it is important to ensure the respect of local culture and to adequate certification methods, access to information and broad networks and capacity building imply external intervention. What it is important is that those interventions are based on the needs of communities, with methods that respect their culture and empower them.

CONCLUSION

As a new tool, certification has raised unrealistically high expectations. It has often been promoted as a panacea to cure all the ills of forests, including issues associated with CFM. It may seem optimistic to hope that certification can solve in a few years of operation all issues that have hindered CFM projects during 30 years. Similarly, certification is not likely to be able to absorb or even reverse the pressure put by globalisation and structural adjustment policies on communities.

However, CFC has proven that it can offer a proactive manner to overcome the problems of integrating environmental and developmental concerns at the community level. If a community is engaged in community-based forest management, all should be done to empower them and support those efforts.

The greatest priority should be given to support communities and partners in the development of tools, mechanisms and methodologies to satisfy a broad range of needs and their expectation. The distinction between “market-based” and other types of certification seems counterproductive. Such a distinction would entail that communities that have different aspirations concerning certification (i.e. market benefits along with social improvements, etc.) would have to undergo different certification processes, thus expanding administrative burden and costs. It seems that working within the existing system to allow a better integration of communities’ needs and specificity would be a more rational and efficient way forward.

Much more integrated work of environmental and social scientists, researchers and local activists is required to improve catalytic elements such as improved social organisation for their management by user themselves.

Currently, there is little common ground between the different buyer networks and, while some companies do make a substantial effort to help certification on the ground, most don't. A “fair trade” dimension should be introduced in their commitments.

To create additional incentives than simply market ones, it could be opportune to develop mechanisms to encourage and reward governments and donors that would engage pro-actively with a long-term perspective to promote and facilitate CFCs.

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ANNEX 1

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ANNEX 2

Table 1/1: Some Case Studies that include non-market incentives to certification

Community Case	Country	Land tenure	Motivations/benefits	Reference
El Centenario Ejido (16 families)	Durango, México	Communal property	-enhanced internal organisation, decision-making, information and financial control -improvement of social recognition in the region -better price	Robinson 2001
Pueblo Nuevo Ejido (1.500 ejidatarios)	Durango, México	Communal property	-recognition of their forest practices -access to funds -have a voice in political circles, empowerment -future access to international and niche markets	Robinson 2001
Ixtlán de Juárez (384 commoners)	México	Communal property	-improve the livelihood, improve provision of services (road, schools) -generate employment -improve forest management	Robinson 2001
San Juan Parangaricutiro	Michoacán, México	Recaptured Communal Lands	-improvement of forest management practices -improvement dialog and conflict resolution skills -improvement business management skills	Central American Coordination for Indigenous/Campesino Community Agroforestry-CICACOF, National Union of Community Organisations of Mexico-UNIFOC, A.C. and IUCN 2000

Table 1/2: Some Case Studies that include non-market incentives to certification

Community Case	Country	Land tenure	Motivations/benefits	Reference
Union of Zapotec and Chinantec Forestry Communities UZACHI	Oaxaca, México	Communal forest	-markets for non-traditional species -monitoring and feedback on management practices -status and prestige	Markopoulos 1999 in: Thornber and Markopoulos 2000
Communities (338 families): La Pasadita, San Miguel, Carmelita, Impulsores Suchitecos, La Técnica	Petén, Guatemala	Comunal Community Forest concessions and co-operatives, multiple use/buffer zones, Maya Biosphere reserve	-control threat of eviction from the reserve and legalisation of use and tenure status -community feel empowered as actor, not just beneficiaries -improvement of social recognition in the region as innovators -improvement and recognition of their forest management practices -improvement in housing, potable water, roads and education -increased conservation awareness	Central American coordination for Indigenous/campesino Community Agroforestry-CICACOF, National Union of Community Organisations of Mexico-UNIFOC, A.C. and IUCN 2000 Robinson 2001
Campesino forestry groups	Honduras	Public forest, usufruct agreement	-open market for lesser-known species, project evaluation and monitoring. Status and prestige	Markopoulos 1999 in: Thornber and Markopoulos 2000
Cooperativa Regional Agroforestal Colón-COATLAH	Honduras	Forest concessions	-co-operative capacity built -improved management skills -improved capacity to manage forest -increase awareness on forest conservation -increased economic income to satisfy basic needs	Central American coordination for Indigenous/campesino Community Agroforestry-CICACOF, National Union of Community Organisations of Mexico-UNIFOC, A.C. and IUCN 2000
Lomerío indigenous community Forest Management Project	Bolivia	Communal territories	-defence and consolidation of land tenure claims -recognition and publicity of the project -status and prestige -internal conflicts resolution -increase income for attending needs	Markopoulos 1998, in Thornber and Markopoulos 2000 Support for the Peasants-indigenous People of Eastern Bolivia-APCOB and Inter. Communal Centre for the Communities of Bolivia-CICOL 1999 Aguilar 2000

Table 1/3: Some Case Studies that include non-market incentives to certification

Community Case	Country	Land tenure	Motivations/benefits	Reference
Muzama Crafts Ltd. Miomo woodlands	Zambia	Forest concession	-improvement forest management -improvement conflict resolution -improvement business capacity -community income for attending basic needs -experience in NTFP	Robertson 2000 Thornber 2000 in Thornber and Markopoulos 2000
Bainings Ecoforestry Project and other experiences in Melanesia	Papua New Guinea	Communal Land	-access to external funding	Bun 2000. Tolfts 1998. Thornber 1999 in Thornber and Markopoulos 2000
Forest Management and Conservation Project-FOMACOP	Savannakhet and Khammouan Provinces Lao P.D.R.	Special Status granted to community on forest land of the project	-supported of a SFM system that could be replicable in villages -secured customary tenure or use rights was done by Decree for the project timeframe -improved of forest management of timber and NTFP, protection of forest lands -institutionalisation of local management at the legal and policy level.	(Litz 2000)
14 certification community projects	Pará and Acre, Brazil	Timber and NTFP production in State Reserves, indigenous reserves, lands under occupancy, extractive reserves	-recognition of value of community forest management -promote preferential treatment -improve lands rights and tenure -empowerment of communities	Amaral and Neto 2001

COMMUNITY LEVEL PARTICIPATION OF WORKERS IN FOREST CERTIFICATION: DOES IT WORK?

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HISTORY OF MY INVOLVEMENT IN FOREST CERTIFICATION

In the late 1980's, forestry unions in many countries saw similar patterns of forest loss and as a result worked together to develop a vision for union involvement in sustainable forestry. This vision included engagement of their memberships in proactive steps to prevent depletion of forest resources. Wood processing and construction unions, many of which were closely associated with forestry unions or included forest workers in their memberships, also acknowledged a stake in the process. They recognised that not only were jobs in the forest at risk but also downstream jobs that relied on the raw materials such as processing and associated jobs in transport and construction were also at risk. For these reasons unions saw forestry issues in the context of wider concerns.

As they developed their policy, unions recognised the very important role that they could play in protecting forests from over-exploitation. They recognised that in many places over-use of resources was inextricably tied to poverty and part of the traditional union agenda was the elimination of poverty through direct action to improve working conditions and wages.

At the international level, the International Federation of Building and Wood Workers (IFBWW) which, with 11 million members is the largest international union organisation representing forest workers in the world, recognised the importance of sustainable forest management to its affiliates in the wood and forestry sectors. In the late 1980's it held a series of regional conferences in Africa, Asia and Latin America to explore key problems and develop solutions. This led to the publication of a global union Tropical Forest Action Programme (IFBWW 1992). As discussions continued within the union movement to include more affiliates the programme was revised a year later to include temperate forests.

In 1993 the IFBWW established a Forest Programme to guide and co-ordinate global union activities (IFBWW 1993). This programme outlined the role of trade unions in protecting forests and identified the key areas for trade union intervention as improving training, occupational health and safety, promoting secure and permanent jobs, safeguarding workers rights, trade union representation, building up independent trade unions, and improving market access of timber and wood from sustainably managed forests. Subsequent work with unions in several countries found that while the forest and union situation varied

between countries, there were a number of common factors: low awareness of forestry issues, limited technical expertise, prioritisation of traditional trade unions concerns (such as low wages and poor working conditions), and poor organisation. These factors helped to explain the low level of involvement in the national and international policy initiatives including forest certification which was still in its early years of development.

In 1997 the IFBWW secured funds from the Dutch government and established a Global Forestry Programme. The goals of this programme were to ensure that union concerns on global forestry issues were incorporated into international initiatives, to initiate and develop national union programmes, and to improve working conditions (IFBWW 1997). A major focus of the Programme, since its inception has been to improve the level of representation of workers in forest certification initiatives around the world.

I was hired as the Director of the Global Forestry Programme at its inception in 1997. Since this time I have built up the programme in Africa, Latin America, Asia-Pacific and Europe and have established national and regional co-ordinators to run the programme at the local level. We have run many training sessions, and regional and international seminars for unions to help them become aware of forest certification and we have supported them to become increasingly a part of national initiatives. At the international level we have lobbied for the inclusion of strong standards to protect workers in certification policy and we have worked with certifiers to monitor ongoing certification agreements making sure that where problems occur they are resolved. I currently sit on the Certification Council of SGS Qualifor which does the majority of the FSC certifications globally.

This paper is based on the practical experience I have gained as Programme Director over the last five years.

KEY CONCEPTS I AM DEVELOPING AND WHY IT IS IMPORTANT TO DEVELOP THEM

In 1999 after discussion with hundreds of unionists in all continents we saw similar patterns emerging for unions when they started to become involved in forestry certification. The concepts we have developed and are developing are improvements for certification based on a practitioner's view of how certification works on the ground.

Unionists are very practical people working at a grass roots level to improve the working and living conditions for ordinary working people. Although certification has been a tool that they could use, it is for many a blunt tool. The first major problem is that some of the most exploited workers receive no additional protection through certification. While this is partly because it appears that it is the companies with better management practices that appear to be most actively engaged in certification there is also a problem that within companies there are marginalised workers. This marginalisation can be a result of many factors such as migration, sex, age, type of contract or work relationship. We are now in a process of working with unions to help increase the coverage for these workers.

A related issue and one that is very obvious to workers participating at the operations level of certified companies is that monitoring needs to be strictly controlled. Workers can

play an important part in this part and the training that we have been organising has involved providing workers with a better understanding of certification contracts so that they can raise issues of non-compliance if they arise. It can be extremely difficult for an independent certifier who visits an operation only a few times a year (or less) to have access to this information.

Finally, certification only deals with the work done in the forest. Workers involved in wood processing and transport of the material are not protected. Our experience has shown that timber is being sold with a label that has been produced in factories where less than adequate labour standards exist. Similarly there may be no environmental accounting of the chemicals used in the production process or of the environmental costs of transport. These issues need to be addressed and ultimately certification needs to be extended to include all stages of the production process.

These concerns form the basis of our ongoing work with certification.

1 OVERVIEW

This paper focuses on community level participation in forest certification from a union perspective. It discusses what unions want to achieve through forest certification, it assesses the successes of local union participation in certification and it discusses how effectively certification meets workers needs on the ground using case studies in Zimbabwe and Ghana. In particular it addresses the following questions:

1. What do we want from certification?
2. Has certification achieved this?
3. From a union perspective, is there a better way to achieve sustainable forest management and can certification be improved?

2 BACKGROUND

In 1993, Horst Morich, Chairman of the IFBWW Wood and Forestry Committee summarised the position of unions towards sustainability and forest certification: "In recent years the trade unions have become aware of this new challenge and we too are under an obligation to examine the ecological repercussions of our own actions. This necessary reappraisal has already begun in the trade union movement. Protecting the natural foundations of our existence is a task for humanity as a whole. We as trade unionists want to make our contribution to this effort" (IFBWW 1993). Since this time unions have increasingly been a part of certification activities. Now, almost ten years on it is useful to examine how effectively they have contributed and what difference they have made. This must of course be done within the overall goals of trade unions which are to improve living and working conditions.

This paper is based on three main premises:

1. Everywhere in the world workers are an important part of the forestry system. At the community level, they are key stakeholders in community based forest operations. They may be owner operators, regular or contract employees, consumers of forest products and users of forest services. As community members the money they receive from their forest work is passed on through the community leading to secondary jobs in the community. Because of their intimate knowledge of conditions at the management unit level they are essential parts of any effective planning and monitoring of forestry activities.
2. Trade unions are democratic structures with elections which involve all their members. Trade unions know about participation and they have experience in the most intense form of participation which is inclusive decision-making.
3. Communities around the world vary enormously in terms of their relationship with the surrounding natural resources. In particular the relationship of the community to its forest resources may differ in different political systems and in different ownerships. Despite this diversity, however, one thing in common is that communities are always composed of workers and these workers are key stakeholders who must be effectively included in decision-making on issues that affect them.

3 WHAT ARE THE GOALS OF CERTIFICATION, AND WHY ARE FOREST WORKERS INTERESTED IN FOREST CERTIFICATION?

The overall goal of certification is a well-managed forest with forest products that can be tracked through the production process and sold using a label that ensures that agreed standards have been met. The whole system is premised on the belief that the consumer, be that an individual or retailer, is willing to pay for the extra costs involved in the production of the product.

Certification of forest products arose ten years ago largely as a frustration by the NGO community against existing lack of action by governments to halt the destruction of the world's forests. Workers and their union organisations have been involved from the beginning. The key issue for workers has been to ensure that sustainable forestry adequately addresses social, economic and environmental elements. For unions certification is one of many tools that can be used to increase the level of protection of workers. Other tools are collective agreements, multinational framework agreements, codes of practice, intergovernmental processes, national legislation, and International Labour Office (ILO) standards.

Particularly over the last three years unions have become increasingly involved in certification and this is due to their assessment that forest certification is an important instrument for achieving greater protection of workers. However experience over the last years has also demonstrated some areas of concern: these relate to the scope of participation

and the level of participation. Certification has not yet evolved structural mechanisms that adequately ensure effective inclusion of workers in the process.

A fundament for ensuring inclusivity is ensuring that workers concerns are adequately known. However, getting information on current working conditions is difficult. While workers are often afraid to report problems because they fear reprisal or dismissal, anecdotal information from unions provides rich insights into the way that forest-based work is carried out around the world. The conditions that unions report in many places, especially in developing countries and in Central and Eastern Europe, are far from satisfactory. Each day forest workers die while on the job. They do not get adequate training, they are injured, they are forced to retire early because of their injuries, perhaps with no social protection, and they work in very poor conditions for very low wages. They live in forest camps with inadequate facilities and may move from one logging site to another far away from their families for long periods of time. They may work for subcontractors with no security of employment and no right to collective bargaining. In many places, they have inferior legal protection and the protection given to them on paper may not be translated to reality. These conditions are not a legitimate part of sustainable forestry.

Forest work is some of the most dangerous work in the world with accident frequencies and death rates two to three times higher than in other sectors. Accident frequency and death rates vary considerably from country to country, for example the number of deaths per one million cubic meters of wood produced is 0.11 in Finland, 1.87 in Switzerland, and 4.4 in Sarawak, Malaysia (ILO 1997).

Women in forest and wood processing jobs are particularly vulnerable and they face special problems that are different and additional to those faced by men. In France, Faugere (1998) found that although women performed a great diversity of activities ranging from heavy forestry work to other forest-related tasks, they were absent from the local network of associations and trade unions and their work "seems to be regarded rather as a pastime or assistance than as something that has and contributes value". Subsequent work in Brazil, Ghana, and Zimbabwe (Faugere and Bowling 1999) with women in forest and wood processing jobs found active discrimination against women and illegal working conditions with women trapped into low status, low paying jobs and lacking the resources to move elsewhere.

Over the last years through a series of workshops, unions have identified the working conditions that would contribute to sustainability (Bowling 2000).

- 1. Right to organise**

Employers should allow workers to have the right to organise and form democratic trade unions, and to engage in collective bargaining.

- 2. Remuneration and living and working conditions**

Employers should provide fair compensation and living and working conditions, and governments should pursue an active labour market policy designed to promote full, productive and freely chosen employment.

3. Health and safety

Employers should work to eliminate preventable accidents and diseases, and ensure safe working conditions.

4. Equality

Employers should respect and pursue policies designed to promote equality of opportunity and treatment in employment, eliminating discrimination based on race, colour, sex, religion, age, political opinion, national extraction or social origin. Employers should ensure that work sites are safe environments for women, free from sexual harassment and other forms of discrimination and abuse, and they should promote women's access to jobs in forestry and promote affirmative action in skills training, recruitment and career development.

5. Child labour

Child labour should be eliminated.

6. Forced labour

Forced or compulsory labour should be abolished.

7. Participation

Employers should ensure full worker participation in all decision-making that affects workers' working conditions and conditions of employment.

8. Training

Employers should ensure workers have the required competence in the area of work they are to undertake so that work is carried out safely and effectively and with attention to environmental protection. Employers should regularly assess skill needs and, where necessary, they should provide formal training and skills tests.

4. Job security

Workers should be offered long-term job security and, unless otherwise agreed, they should be employed on a permanent basis.

5. Contract workers

Whenever possible, conditions for contract workers and regular employees should be standardised so that they have equality of terms and conditions. Contractors should not be used to avoid or deny legal rights or obligations.

6. Migrant workers

Locally trained workers, who are living locally, should be used where possible. Where migrant workers are employed, employers shall protect these migrant workers and their families.

7. Indigenous people

The rights of indigenous peoples should be respected. Employers should promote access to jobs in forestry and affirmative action in skills training, recruitment and career development.

8. Community involvement

Employers should respect the social fabric of local communities, and consult with local communities on decisions, which affect the well-being of these communities. Employers should where possible use locally trained people who are living locally and they should not undercut local wages structures by using cheap imported

labour. Local communities should get fair share of the economic returns generated by their local forests.

Many of these items are inter-linked, and improvements in one area will necessarily lead to improvements in other areas. For example, without long-term job security it is difficult to make investments in worker training, and worker skills do not have a chance to develop fully. This has implications for health and safety. In a recent study of wood processing operations in Brazil (Alves 1999) 43 percent of accidents occurred within 6 months of starting to work with a specified piece of machinery and this dropped to 8 percent when workers had been working with the machinery between 18-24 months. Piece-rate remuneration encourages workers to attain high outputs as quickly as possible without regard to the ecological consequences and basic safety standards. This form of remuneration creates stress on workers and stress on the forest. Providing workers with long-term employment and a stable basic wage improves not only the health and safety of the workers but also the health of the forest.

4 OTHER INTERNATIONAL PROTECTION FOR WORKERS

International guidance and protection on many workforce issues is provided by the International Labour Office (ILO). The ILO Conventions are adopted by the International Labour Conference after a tripartite process involving government, employer and worker representatives. Once a member state to the ILO ratifies a Convention the country becomes subject to legally binding international obligations.

While the ILO's 180 Conventions cover a wide range of labour issues, the most fundamental human rights are covered in the seven core ILO Conventions which aim to prevent the very worst forms of repression, exploitation and discrimination. These core Conventions, which are amongst the most highly ratified of all ILO Conventions, are Conventions 87 and 98 on the rights to freedom of association and to bargain collectively, Conventions 29 and 105 on the abolition of forced labour, Conventions 111 and 100 on the prevention of discrimination in employment and equal pay for work of equal value, and Convention 138 on child labour. Taken together, these core Conventions form a basic minimum level of protection for workers (ILO 2001).

The relevance and importance of the seven core ILO Conventions was stressed in June 1998 when the International Labour Conference adopted the ILO Declaration of Fundamental Principles and Rights at Work. The Declaration is important because it reinforces the principle that Membership of the ILO represents a basic commitment to the Constitution of the ILO, and particularly to the fundamental rights embodied in the core conventions. The Declaration also reaffirms that the ILO has a reciprocal obligation to member states to assist them in attaining these objectives (ILO 2001).

The ILO Conventions and their supporting Recommendations form a strong basis for protecting workers and providing useful, widely acceptable international standards for forest certification. Poschen (2000, 2002) has provided detailed explanations of how these ILO standards could be applied to certification.

In addition, the ILO Code of Practice on Safety and Health in Forestry Work (ILO 1998) provides comprehensive guidance and is now forming the basis for national initiatives in several countries. Unions who along with governments and employers were involved in the development of the code are supporting implementation of the code by providing training sessions in South Africa, Brazil, Chile, Indonesia and Malaysia.

Given the existing ILO standards on worker protection, it is obvious for unions that certification should fully include these widely recognised standards as part of the social elements of certification. Both the FSC and the PEFC systems have done this to varying levels and it is hoped that in the future such standards will be fully included in all credible certification initiatives.

5 IS A COMMUNITY LEVEL APPROACH PARTICIPATORY - FROM A WORKER'S POINT OF VIEW?

An omission from the ILO Conventions is a Convention specifically addressing the increasingly important issue of stakeholder participation. While participation is an important cornerstone of forest certification, from a worker's point of view it is not always carried out satisfactorily.

In 2000, the Joint Committee Team of Specialists on Participation in Forestry working under the auspices of the FAO/ECE/ILO released a report on public participation in forestry. This group has defined public participation in forestry as follows: "various forms of direct public involvement where people, individually or through organised groups, can exchange information, express opinions and articulate interests, and have the potential to influence decisions or the outcome of specific forestry issues... The intensity of public involvement varies from simple information exchange to more elaborate forms of collaborative decision-making or implementation". FAO/ECE/ILO (2000).

Communities are not homogeneous units, the people who compose them have differential power relations and it is an over-simplification to assume that "community" level decision-making is truly representative, or that because a community is nearby the forest it will have more incentive to manage in a sustainable way. Less powerful groups, such as workers who are not owners, poor people, and women are easily overlooked and marginalised unless adequate structural mechanisms are in place to ensure their effective inclusion in decision-making.

Even at the level of individuals there may be different roles that any one person plays at any one point in time. This may reflect for example, differences in preferences, needs and circumstances or access to power. The role of workers in the community is diverse and this means that an individual may have different attitudes and relationships with the forest. They may work in the forest of in an industry that is supported by the forest. They may be owners of the forest, users of the forest or both. In terms of use they may use the forest for recreation such as hiking or they may have a more instrumentalist approach such as hunting, gathering food or extracting timber for fuel-wood. Attitudes may differ between the sexes and may change with age or economic circumstances.

All too often communities are seen as homogeneous and this means a blind spot when it comes to differences in access to power and the use and attitudes towards forests. Unless there are adequate structural mechanisms in place to effectively include the people in community based initiatives then these initiatives have the potential to suffer the same problems faced by commercial enterprise-based forestry.

This issue is a problem in existing certification initiatives. Certifiers who assess forest operations do not always make it a point to discuss issues with the forest workers. If they talk only to the owners of the enterprise being certified they miss information and they may be responsible for misinformation. Anecdotal information from several unions and experience with health and safety representatives shows that unless adequate controls are in place to ensure that workers and their representative unions are consulted, management only will be consulted. This needs to be more effectively built into certification models.

6 FIELD ISSUES FOR CERTIFICATION: CASE STUDIES IN BRAZIL, GHANA AND ZIMBABWE

Work carried out by Alfter (1999) in Zimbabwe, Faugere and Bowling (1999) in Zimbabwe, Ghana and Brazil and Iorgulescu, Bowling and Schlaepfer (2000) in Ghana, together with seminars carried out in these and several other countries by the IFBWW show some of the problems inherent in getting reliable information at the field level on workers issues in certification:

1. Workers may be afraid to speak in case they lose their jobs or are disciplined. This means that where working conditions are unsatisfactory workers may be particularly unable to discuss working conditions, yet this is where the most need is.
2. Workers may not be familiar with the language used by the certifier and they may not fully understand the issues that are being considered in the certification exercise. Furthermore they may be intimidated by an "outsider" to their village, particularly from another country, and not willing to talk about sensitive issues.
3. The closed form questionnaires used by Alfter (1999) and Iorgulescu et al. (2000) were aimed at company management, forest worker representatives and woodworkers. Significant differences between these groups were found in the responses to the same questions. Management for example, showed a tendency to omit details on health and safety problems that workers included in their responses.
4. Women in forestry are particularly vulnerable and they face problems that are additional and different to those faced by men. Active discrimination and illegal working conditions are not uncommon with women trapped into low status, low paying jobs and lacking the resources to move elsewhere.
5. The problems that women face may also be exacerbated by the fact that they are less visible than men. While women may perform a great diversity of activities ranging from heavy forest work to other forest related tasks, they are absent from the local network of associations and trade unions. Trade unions across the world struggle with the lack of women representation in their elected structures.

6. Migrant and contract workers are other invisible but exploited groups. Particularly if they are temporary workers they may be inaccessible and their issues overlooked.
7. At the national level there is a tendency for forestry and wood unions to merge. It is politically difficult for these amalgamated unions to promote forestry issues only, especially when similar issues are faced by both forest and wood workers, and increasingly the leadership in such unions is wanting to cover all their members.

7 CONCLUSIONS

There are a number of different processes at both the national and international level which aim to improve the way that forestry is practised. Experience to date suggests that certification has already had a very positive effect on forest management operations in many countries around the world. For unions certification is one tool and it will never replace the more traditional union approaches of collective agreements or multinational framework agreements and codes of practice.

Based on union experience there is room for improvement in forest certification in the following areas:

1. Certification involves decision-making about how a forest is to be managed. Decision-making is about power, or rather sharing power and for it to be representative and participatory it has to include substantial institutional and structural elements that ensure equitable sharing of this power. Such elements are not yet fully integrated into certification processes at present.
2. Participation in certification has to move beyond the more passive forms of participation such as information exchange and it has to fully include all stakeholders in decision-making.
3. Certifiers need to actively include forest workers and their unions in their field assessments in order to accurately capture all relevant information at the management unit level. Interviews with management only may miss key information especially with respect to working conditions. Employers rather than workers or unions are still often used as primary contacts.
4. Women issues are a blind spot in certification. Given the special issues that they face special considerations need to be included in the standard and implementation guidelines to ensure their active participation and to ensure that their issues are fully recognised and incorporated.
5. Adequate resources need to be available to ensure adequate monitoring. Especially when workers are afraid of losing their jobs or being faced with disciplinary action it is difficult for a certifier to get clear information. It is particularly important to check employer responses on issues related to working conditions. Adequate structures need to be in place to ensure the effective incorporation of workers ideas.

6. Migrant workers and contract workers form a particularly vulnerable group and all attempts need to be made to ensure their participation. Agreements at the company level need to ensure that subcontracting is not used to avoid legal responsibilities.
7. Certification must cover all stages of the production process from the forest to the point of sale of the certified product. At both national and international levels there is a tendency for forest and wood unions to merge. It is politically difficult for these amalgamated unions to promote forestry issues only and the leadership of these new super unions is increasingly wanting to cover all their membership in certification (or certification-like) agreements.
8. Forest certification needs the flexibility to grow and respond to new issues. One of the strengths of certification is that it has enabled forest managers to make changes to the way they manage their forests. As a result of the certification process new issues have emerged for managers and certainly as a result of the participatory nature of certification new groups have talked to each other and productively exchanged information.
9. From a union perspective and particularly at the local level it is obvious that the different players involved in certification have different access to resources. Unions across the world have found it difficult to train the grassroots shop-stewards to be aware of certification and then to actively participate in certification discussions with companies as they become certified. Certification programmes need to assure the resources necessary for all stakeholders to be able to participate fully in the certification process, not for just those such as the forest industry with resources. Training sessions for these people could be a useful part of certification initiatives in the future.
10. More research is needed on fundamental issues related to working conditions. Unions being very practical grassroots organisations do not routinely undertake such research although they have access to the information and it is available anecdotally. It would be useful for resources to be made available to the research community to undertake this necessary work.

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COMMUNITY CONCESSIONS AND CERTIFICATION IN THE MAYA BIOSPHERE RESERVE

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BACKGROUND ON THE AUTHOR'S PERSPECTIVE

It is not as an expert in certification but for my curiosity about participatory forest management that I took part in the conference on the social and political dimensions of forest certification. When I was working with non-governmental organizations on the United Nations Intergovernmental Panel/Forum on Forests and the Convention on Biological Diversity during the mid-1990s, I was exposed to lively discussions about certification, governments being then obviously bewildered about how to handle this new “thing” and NGOs worried about how to keep governments from spoiling the experiment. At this international level, it was difficult to understand how certification could actually work on the ground. I took the opportunity during a recent trip to the region of Petén in Guatemala to look more closely into how local communities are actually involved in certification and what their own perspectives are. On the basis of this experience, I think that certification should be more conceptualized, valued, and practiced as a multi-stakeholder-based policy-making process rather than being considered merely as a market instrument. Certification would then become a more effective institution for strengthening local capacity building, for motivating collaborative and iterative learning, and for integrating, in addition to environmental considerations, dimensions of social justice and cultural diversity.

GENERAL CONTEXT

The Maya tropical forest stretches from the Mexican state of the Chiapas into Northern Guatemala and Belize. It is - after the Amazon - the greatest stretch of tropical forest in Latin America.² Many of the Mayan civilization's vestiges are still buried under the luxurious vegetation of these forests. The three countries hosting this exceptional biological and

¹ I thank in particular Ileana Valenzuela and her colleagues from the Asociación de Comunidades Forestales del Petén, without whom I would not have been able to do this case study, as well as Piers Voysey from Mundo Justo for his precious comments to this paper's drafts; all mistakes are, however, mine.

² About 800 species of trees, 422 species of birds, and large populations of mammals, including monkeys (hauling monkeys, etc.), tigers, and many species of bats have been identified in the Maya tropical forests (Nations 1999).

cultural diversity have declared more than 20 wildlife reserves and national parks. The largest of these protected areas (including most of the other types of protected areas) is the nearly 2-million-hectares-wide Maya Biosphere Reserve (BR) of Guatemala. The Maya BR was established in 1990 and covers 19% of Guatemala's territory; the core area amounts to 747,800 ha. and the multiple-use zone to some 864,440 ha. Both, the core and multiple-use zones are property of the state; the rest of the reserve is constituted of buffer zones, which include private property. The BR is also classified as World Patrimony and as a Ramsar site for its numerous wetlands.

Whereas Petén was about 90% forested in 1970, more than half of the region has been deforested since; large forest fires were particularly destructive during the 1990s. The causes of deforestation are multiple and related: They include the advance of the agricultural frontier, with large farms - mostly cattle ranches - being installed even in the reserve's territory, and new settlements of people in search of land. Land speculators came from all parts, using resource-poor people to enter and clear the forest before selling the land to large cattle owners. Land hunger in other parts of the country is very high³ and rather than attempt land reforms, the various governments in place since the 1960s have encouraged settlement in Petén.⁴ Access to forests is facilitated by logging-, oil-, and trade-related road constructions.⁵ Further causes related to the unsustainable use of forests include political instability and insecurity, speculation, illegal logging and trading, and, not least, oil exploration and extraction within the reserve.⁶ These causes often also take advantage of short-term, deficient, inadequate, or locally non-adapted policies stemming from national and international levels.

Conservation policies also have played a non-negligible part in the causes of unsustainable uses and livelihoods in the context of Petenese forests. When the Maya BR was established, between 1990 and 1996, major discontent arose among local communities that were not taken into account in the conservation plan and hence were often evicted from - or curtailed in their access to - the forested land. It was mostly the small-scale users of the forest who were repressed, whereas the more destructive activities of illegal loggers and large

³ About 2% of Guatemala's population owns between 60% and 80% of the country's land (Fort and Grandia 1999:87)

⁴ Population growth rate in Petén is about 9.5% per year, two thirds of which is attributed to immigration (due in part to the improved political situation) (Fort and Grandia, 1999:88).

⁵ A new project of a road linking Uaxactún to the south of México (Río Azul) running through the middle of the BR is being discussed.

⁶ Oil exploration in Guatemala started in the 1920s; according to national law, no exploration or exploitation of oil should take place within national parks (decreto 109-83, art. 66). However, Basic Resources International Limited (Bahamas) obtained exploration and extraction rights within the National Park of Laguna del Tigre and Biotope Laguna del Tigre - Río Escondido. When the BR was established in 1990, CONAP in its Master Plan forbade exploitation in the nucleus zone of the BR but not in the multiple-use zone. Since the mid 1990s, the International Finance Corporation of the World Bank has provided credits to Basic Resources International Limited and pressures to obtain new oil concessions in the multiple-use zone greatly increased during early 2000. However, in response to a strong local, regional, national, and international campaign (<http://www.nrdc.org>), (the president stated that no new concession for the oil industry was to be granted in the Mayan BR (Strickland 2000)). Substantial uncertainty still lurks, with the Plan Puebla Panama promoting large infrastructure development projects across Central America (<http://www.sre.gob.mx>).

farmers as well as oil companies continued with impunity. Some exclusive environmental protection and archeologists' interests, stemming mostly from Northern countries, do still persist in failing to consider local communities' needs and their knowledge and capacity in sustaining natural and cultural resources.⁷

The Granting of Community Concessions: A Historical Process

In the early years of the Maya BR, the conflicts between the local communities and state agencies reached such point that, in order to avoid the escalation of violence and repression, the search for participatory forms of conservation and sustainable management became a priority. The establishment of forest concessions granted to communities then appeared as an alternative. Under the impulsion of the Peace Agreements in 1994, the National Council for Protected Areas (CONAP)⁸ established a regulation allowing local communities' organizations, in the name of one or several legally entitled representatives, to obtain a concession for the sustainable use of the forests within the multiple-use zone of the Maya BR.⁹ The concessions are granted for 25 years; the leases are renewable, but the land remains the property of the state.

Community organizations applying for concessions need to prove their determination to respect conservation measures and to sustainably use natural resources. The communities need to organize and legalize their status, constitute a committee with an elected representative, and be recognized by the municipality.¹⁰ Furthermore each community association needs to be linked to an NGO for technical support. To obtain concession rights, the community¹¹ with the support of an affiliated NGO draws a map of the area it wishes to lease - taking into account the zones of protection (including archeological sites) - within the multiple-use zone of the Maya BR. The proposed zoning is then discussed with nearby communities, and the final consideration or decision for the granting of the concession is submitted to a public consultation (30 days). Within the next 15 days, CONAP is in charge of approving - or arguing on reasons for rejecting - the proposal. Once the concession is approved, the community develops a forest inventory and a management plan. Both of the latter procedures have to follow a certain format and are subject to the approval of CONAP.¹² CONAP determines a lease on the basis of the concession's acreage and the

⁷ There currently are pressures to extend the cores zones, at the detriment of the community concessions in the multiple-use zones, such as around the National Park of El Mirador - Rio Azul.

⁸ Guatemala's government issued its law for protected areas in 1989 and created thereafter the CONAP.

⁹ At this stage, besides local organizations, the German Cooperation (GTZ) and IUCN - the World Conservation Union provided support, and, later on, the National Programa de Frontera Agrícola.

¹⁰ Three types of community-based organizations have obtained such leases: civil societies, associations, and cooperatives. The status and involvement of members vary among these various organizations. Although in cooperatives the members are acting mainly as workers, they may in other cases be co-investors and co-beneficiaries.

¹¹ The definition of communities varies according to the group of producers - these may be loggers, xate producers, chicle and pimienta extractors, carpenters, or other artisans working with wood and non-wood forest products. The community may also be a group of families or neighborhood residents.

¹² The Plan de Manejo Integrado/Diversificado is divided into 5-year plans of cutting. Zones of annual cutting are measured in lots of 500 ha. The cutting cycles vary between 30 and 40 years, the diameters of trees that can be cut vary from 60 cm for species like Mahogany (*S. Macrophylla*), up to 45 cm for Cedar (*Cedrela odorata*) (Carrera et al. n.d.).

type of resources exploited - forestry, agriculture, and tourism uses are evaluated equally in order not to influence the conversion of one into another. For the first concession admitted, the lease was set at 1 Quetzal per hectare per year.¹³ Once all these elements are agreed, the contract can be concluded in front of a lawyer (with the guarantee of a fiduciary). CONAP has the responsibility of monitoring the management of the concession in the terms agreed (CATIE-CONAP 1996); however, the responsibility of implementing the management and activities is the community's. Since last year, a new requirement has been added to the concession regulation: The concessions operating in the multiple-use zone of the BR have to be certified within the 3 years following their establishment.

The state can have access at any time to the accounting books of the concession to verify uses. Although the concessionaries benefit from the protection of CONAP to guarantee the exclusivity of their user rights, CONAP holds the right to limit some uses for conservation purposes if required. If these restrictions are going to damage the concessionaries, CONAP has to provide compensation. On the other hand, CONAP can abrogate the contract as a sanction for unaccomplished terms - concessionaries causing damage to the natural resources may have to pay the costs, as CONAP and the municipality require. A committee of control including members of CONAP, the municipality, and the local community has the responsibility to discuss and follow up on the use and management of the concession. This collaborative monitoring committee also has a coordination, a communication, and a non-judiciary conflict-resolution role (Instituto de Derecho Ambiental y Desarrollo Sostenible 1996).

In 1994, the first two community-based concessions were constituted: San Miguel la Palotada and la Pasadita. These were model initiatives motivated mainly by outsiders (CATIE - CONAP 1996). Their examples were not replicated swiftly; it was only several years later that local communities started to organize among themselves and to appropriate the process.

LOCAL FOREST COMMUNITY ASSOCIATIONS: BUILDING COLLABORATIVE CAPACITY

In November 1995, an umbrella organization constituted by representatives of the communities living and/or working in the multiple-use zone of the BR was established. The Asociación de Comunidades Forestales de Petén (ACOFOP) stated as its main goal "the conservation of the forests and the improvement of the quality of life of the communities". Its primary task was to develop and legalize opportunities for alternative resources management. By March 2001, ACOFOP was legally constituted as a federation of 16 community organizations (i.e., associations, civil societies, and cooperatives). Although the

¹³ This amount stands for the total value of the concession - estimated in this case at 10 Quetzal per hectare - and divided by the number of years the lease is meant for (10 years); 7.6 Quetzal equals about US\$1 as of September 2001. In addition to the lease, the communities must also pay taxes according to the type and volume of resources extracted; part of these taxes goes to CONAP, and part goes to the municipality. There are also additional taxes proportional to the revenues related to the sale of forest products.

board of ACOFOP is composed of the legal representatives of 7 of its member organizations, it has worked since its beginning with many more local forest-management-related organizations.¹⁴ ACOFOP has also gained national, regional, and international visibility and credibility as a key actor in making Guatemala the world's second country in coverage of forests managed by community enterprises, and certified by the Forest Stewardship Council. In fact, by spring 2001, 17 community organizations were managing 425,854 ha. of the Mayan forest, which ACOFOP estimated - based on the number of members involved in these organizations - to benefit close to 5,000 families. According to ACOFOP over half of this forest coverage is already being certified. FSC on its latest announcement on its website (June 2002) estimates actually 245,350 ha. of these community concessions to be certified (excluding the two industry concessions on another 67,111 hectares -likewise certified and situated in the multiple use zone of the BR.).

Some of ACOFOP's main objectives are to enhance local communities' continuous communication, democratic leadership, participatory management, rigorous and transparent administration and accounting, entrepreneurship, and autonomy (depending less on intermediaries, establishing revolving funds, etc.). ACOFOP seeks to develop a shared vision for an integrated and diversified approach to forest ecosystem management, including sustainable use of timber and non-timber forest products and community-based ecotourism. It also works at making gender a cross-sectoral theme (ACOFOP 2001, personal communication)

ACOFOP does not consider itself an NGO but a community-based association, and it sees its role as strengthening the organization and capacity of local communities. At a national level, ACOFOP is actively working for the development of forestry laws and regulations that are adapted to local realities. Locally, it is a center for social learning where communities from Petén exchange their experiences and develop their own visions and capacities for enhancing local economic opportunities that are compatible with the conservation and sustainable use of the forest. Such seminars allow face-to-face exchange, as few members read, write, or have access to the media and modern communication tools. Exchanges also take place regionally with communities from Mexico, Belize, and other Central American countries.¹⁵ The challenge for ACOFOP in order to be effective as a representative of local communities is to gain sufficient weight to ensure that the activities of the different governmental organizations and NGOs and local associations working in the region coordinate their respective activities.

¹⁴ ACOFOP works with a permanent staff of about 15 persons. The member organizations federated in ACOFOP at the time of the study (Spring 2001) were: Cooperativa Selva Maya del Norte; Sociedad Civil Custodios de la Selva; Cooperativa la Felicidad; Sociedad Civil Para el Desarrollo - Arbol Verde; Cooperativa Union Maya Itza; Cooperativa la Technica; Sociedad Civil el Esfuerzo; Asociación de Productores Agroforestales de la Pasadita Arolapa; Cooperativa Monte Sinai; Asociación Forestal Integral del Cruce la Clorada; Asociación de Productores San Miguel la Palotada; Sociedad Civil Impulseros Suchitecos; Cooperativa Bethel; Sociedad Civil Laborantes del Bosque; Concesión Forestal la Colorada; Organizacion Manejo y Conservacion; Cooperativa de Comercializacion Integral.

¹⁵ For example, ACOFP participated in the constitution of the Coordinadora Indígena Campesina de Agroforesteria en Centro América.

AN EXAMPLE OF A COMMUNITY CONCESSION: THE SUCHITECOS

After the more experimental and directed establishment of the community concessions of San Miguel la Palotada and la Pasadita, the Suchitecos of the Eastern area of Petén, near the border with Belize, were the first community to use proactively and in a self-mobilized mode the legal opening of community concessions. The local community claimed that obtaining such a concession would help it to combat illegal logging. The Suchitecos were not all residents of the area; some also came from nearby towns. After 10 years of negotiations, the Suchitecos finally received in March 1998 the concession contract of the Unidad de Manejo Rio Chanchich. Since then, out of its 12,217 hectares' concession, the community has exploited about 400 ha. For planning and regularizing this extraction, the Sociedad Civil de Impulsores Suchitecos developed an annual plan of operations as part of a more general management plan.¹⁶

The Rainforest Alliance Smart Wood program - accredited by the FSC - started certifying the concession in 1998 with norms adapted to Petén. In January 1998, it delivered the certificate of good compliance to Rio Chanchich, the first community to receive such a certificate in Guatemala (No. SW-FM-COC-063). The certifiers' team was composed of one sociologist, one forest engineer, and one biologist and has been actively supported by the Fundación Naturaleza Para la Vida (NPV), whose role has been to provide technical support to the forest concessionaries.¹⁷ The NPV has the mandate of helping to draw a strategy for commercializing certified wood at national and international levels. In 1999, the community did not gain access to the certified market, for which prices would have been better; however, it obtained for the collective sale of the various types of quality grades (the major part going to the United States, and some going to Denmark) almost double what it obtained in the previous years. Half of the extra income was used to create a fund for investing in equipment, and half was distributed among the members of the Sociedad Civil.¹⁸ Beyond financial benefits, the NPV claims that the experience enhanced the community's feeling of ownership over its concession's territory, which raised its sense of responsibility and

¹⁶ The annual plan outlines how resources will be extracted in order to allow their sustainable use, describing measures to limit damage to standing trees: leaving young trees standing, cleansing remaining vegetation from lianas, building logging paths (i.e, skidders), using machinery in ways that ensure soil and water conservation, developing the capacity for appropriate monitoring, decreasing waste in the amounts of cut wood, increasing security of forest workers, preventing forest fires, and countering illegal logging and poaching in coordination with CONAP. The concessions comprise 12,217 ha., of which 10,000 are considered productive; 8% is non productive, and 10% is reserves for the protection of nature and water. The management plan includes wood and non-wood products such as xate, chicle, pimienta, bayal, and, in the future, ecotourism (see Footnotes 25-29).

¹⁷ NPV and the Project CATIE/CONAP under the Maya BR are financed by USAID Guatemala (Fundación Naturaleza Para la Vida, 1999). NPV, or the Nature for Life Foundation helps residents develop and follow forest management plans and provide them with training in sustainable forestry (Carlos Gomez, npv@guate.net). CATIE stands for Centro Agronómico Tropical de Investigación y Enseñanza, it is a non-profit organization based in Costa Rica. It seeks to improve the well-being of humanity through the application of scientific research and higher education through Central America (<http://www.catie.ac.cr/wcatie/qchistoria.htm>).

¹⁸ In 1999, the income was 1,230,882.05 Quetzal. In its five concessions, in 2000, as in other years, the Suchitecos of Melchor exploited 400 ha. and gained 1,300,000 Quetzal, or US\$216,000 (Carrera et al. n.d.).

efficiency, consequently lessened damage to the wood. The most visible effect has been a net decrease in forest fires during the last years in the areas that became concessions.

COMMUNITY FORESTRY AND CERTIFICATION PROCESSES: OPPORTUNITIES AND PROBLEMS

What are the costs and the benefits of having already over 245,000 ha of community concessions certified in Petén? Although, so far, the sale of certified wood does not compensate for the costs of certification, the access to the market with certified wood is presently quite good (interview with ACOFOP 2001). In 2000, for the 10 community concessions that have produced timber, a total volume of about 7,652 Mts. has been extracted out of 3,139 ha. Although about 17 tree species were identified in this production, 62% of it was Cedar (*Cedrela odorata*) and Mahogany (*Swietenia macrophilia*).¹⁹ Most of this wood went to the United States, a substantial part to Mexico and some to Europe and national markets (ACOFOP 2000). It is more difficult to find access to markets for other types of wood. Mundo Justo is presently studying potentials for the extraction, processing, and commercialization of wood from secondary forests and of less known species.²⁰ In late 2001, ACOFOP, with Mundo Justo and associated community groups, launched a commercial development office whose aim is to advise and help coordinate local communities on contracts and relations with buyers.²¹

In fact, the FSC-led certification process in the area (the Rainforest Alliance being the certifier) so far focuses only on wood production. Even though the FSC includes the certification of non-timber forest products (NTFP), little has been done in this realm in the Maya BR.²² However, local communities and the ACOFOP presently aim to diversify and develop uses and options for NTFP that constitute a substantial asset for local livelihoods. NTFPs extracted in the Maya BR for commercial purposes include *chicle*,²³ *xate*,²⁴ *pimienta*,²⁵ medicinal products,²⁶ etc.²⁷

¹⁹ Total income was 7.5 million Quetzal (about US\$800,000), and net income was about 3.6 million Quetzal (slightly over 500,000 Quetzal were paid for taxes - of which four fifths went to CONAP). Generated employment totaled about 22,531 working days for an average of 47 Quetzal per day.

²⁰ Piers Voysey and Brenda Castillo, personal communication, San Benito, 2000, mundojusto@itelgua.com.

²¹ This initiative is related to the Alianza para un Mundo Justo and is supported by the UK Department for International Development. For more information see www.justby.co.uk.

²² CONAP has not yet developed norms for the sustainable use of non-timber forest products (CATIE-CONAP 2000)

²³ Chicle has been extracted in the region for more than a century from the tree *Manilkara zapota*. About 1,000-1,300 people work and live on chicle for 3 to 4 months during the year (with a salary more than double the Guatemalan minimum daily salary). The entire production outlet depends on the demand of only one or two enterprises of natural gum in Japan, which makes the market particularly vulnerable.

²⁴ Xate is a palm belonging to the genus *Chamaedorea*; it is used for flower arrangements. It has been extracted from the forests of Petén for over 35 years and is collected through the entire year (but with a higher intensity during the dry season). It benefits about 4,000 families in the region (collectors earn, on average, US\$5.15 a day; the average daily salary in Guatemala in 1995 was between US\$2.73 and US\$4.55).

²⁵ Pimienta gorda is the fruit of the tree *Pimienta dioica*. This (called allspice in English) has been harvested since the late 1950s for essential oils, spice, and medicinal purposes. The industry employs about 1,000 families during a

Given the exceptional natural and cultural richness of the region and the need to create new opportunities for local livelihoods, the potential for community-based ecotourism is being assessed by ACOFOP. Among visitors entering the country,²⁸ one fourth visit the national park of Tikal, central to the Maya BR core zone, but they tend to leave the region right after. There is a great interest in diversifying the spots of attraction around the many yet undeveloped Mayan vestiges (CONAP, USAID 1996).²⁹ However, challenges for meeting visitors' demands in the context of poor public services in the distribution of drinking water, sanitation, garbage disposal, and access are high for local communities. Large-scale tourism infrastructures - often part of multi-national hotel chains - have the capacity to meet these demands by installing these infrastructures for their own uses, but they tend to provide few benefits to local communities. Collaborative organization among local communities may, however, help to develop the offer - and to meet demands - for more personalized, simple and authentic accommodation, using and valuing local products and capacities. Hence, the certification and labeling of the products used is part of the concept of ecotourism.

Potentials and limits related to the commercialization and certification of wood coming from well-managed forests have been discussed by ACOFOP in conjunction with the regional associations of the Comunitaria Centroamericana (CICAFOC) and the Union Nacional de Organizaciones de Forestería Comunal (UNOFOC) during a seminar taking place in Northern Petén (COMUNITARIA CENTROAMERICANA ET AL. 2001).³⁰ We summarize some of the points made during this event.

Concerning limits, besides market fluctuations that may be more or less favorable, the difficulty for local communities to gain more control over the production chain from the forests to the consumers creates insecurity; transport is one of the immediate problems that results in great amounts of wasted wood (RUANO 1993). For the community concession of Carmelita,³¹ there were problems with the marketing of wood products. Although the community recognized that the prices it would get for its timber would be even lower

2-month period (during which a collector may earn some US\$6.51 daily). The figures on uses of xate, chicle and pimienta are based on the work of C.S. Manzanero (1999).

²⁶ Medicinal plants are still well known and much used by local people. According to a study from the University of Tulen, the 60 species of medicinal plants that are most used come actually from the bosque (secondary forests) and not from the monte (primary forest; Comerford 1994).

²⁷ Other NTFP products include bayal (*Desmoncus*) for baskets, hats, and furniture making (I have no data about hunting-related incomes, but these are based mostly on catches of wild turkeys).

²⁸ Tourism is a fast growing industry in Guatemala too, in 1996 over half a million tourists entered the country. During the 90s average income per year from tourism reached some US\$ 250 million (Manzanero, 1999:51). We may compare this figure to the relatively low country level income from wood exports: US\$ 15,3 million, in 1999 www.agexpront.com/pdf/analisisexportpdf:22.

²⁹ ACOFOP organized in the spring of 2001 one week of exchange among Petenese communities in order to assess potentials and obstacles to the development of community-based ecotourism.

³⁰ CICAFOC is a regional indigenous organization in Central America, it works since 1990 on various eco-development and empowerment projects. UNOFOC focuses on forestry and federates member organizations involved in communal management of forest resources, it is funded through governmental assistance and various international development organizations (<http://www.acicafo.org/02/02.html>).

³¹ The concession of Carmelita encompasses 53,775 ha. For the cooperative of Carmelita, members need to provide 300 Queztal to become associates; the cooperative keeps on recruiting new members.

without certification, it also recognized that without the support of NGOs, it would not have been able to cover certification costs.³² Concern was expressed during the same workshop about the future of certification in the area, because NGOs are bound to diminish their presence (partly because of a CONAP policy requiring a progressive stepping out of NGOs). Local communities' capacity (for monitoring, etc.) along the FSC certification framework needs first to be enhanced.

As communities seek to add value to the timber prior to selling and/or exporting it, participants to the seminar proposed as an interesting option to sell wood-carved crafts to tourists, and to process some carpentry and house-building material for selling them on the local markets. However, the FSC label so far does not give a sensible advantage to these efforts.

Looking toward potentials, participants noted that the community concessions system in the BR and the related certification process foster the participation of a wide array of local actors and provide them with learning opportunities for collaborative management. The seminar's recommendations were that the communities should further work on ways to:

- Cross-fertilize their respective experiences across the Central American region
- Keep record of certified products and organize collaboratively their access to the market;
- Develop certification for less well-known species;
- Prospect into potentials of local and regional markets;
- Transform wood locally for greater added value;
- Influence international trade agreements toward equitable trade;
- Build the capacity of local certifiers, and
- Develop, in addition to the FSC, a label of origin valorizing socio-cultural origins (in this case, community forest enterprises in the Mayan region).

During our visit in Petén we have further learned from local craftsmen, that they wished to develop their capacity to export value-added wood products to consumers who are sensitive to environmental and socio-cultural criteria, and needed to better assess such demand. NGO related professionals engaged for the sustainable commercialization of certified timber suggested that local communities should further develop their capacity to run enterprises that manufacture timber for construction material or furniture for international markets (VOYSEY, personal communication, 2001). According to local community organizers, the key asset provided by certification is the enhanced legitimacy and credibility it provides for local communities to manage forests and their multiple benefits. Such credibility is not only useful

³² Some of these NGOs are Pro-Petén, NPV, (Fundación Naturaleza Para la Vida, see footnote 17) and Centro Maya (a non profit organization created by the government of Guatemala in 1992, including governmental, non-governmental and academic members, it is working in Peten for appropriate technological transfer for sustainable agriculture and for community forestry, <http://www.guate.net/centromaya/organizacion.htm>).

for gaining access to markets - in particular in the North (by-passing the boycott against tropical wood) - it also helps for gaining access to international donors.³³

COMMUNITY-BASED FOREST GOVERNANCE IN PETÉN: MAIN ACTORS AND ROLES

From the conference on the social and political dimensions of forest certification, it became clear to me that there is a great need to assess more clearly, on the basis of case studies, who are the different actors taking part in the entire production and market chain, what their respective interests are in the certification process, and how they are developing collaborative processes for sustaining natural resources and livelihoods. Considering the main actors identified in this succinct case study, one can already crystallize some opportunities and constraints that certification processes entail for the communities of Petén. I distinguish the main actors in four categories: associations of local communities, governmental organizations, various NGOs (mostly operating with international support), and some less known intermediaries and buyers.

Local Communities

Problems that frequently constrain the large-scale participation of local people are lack of time and lack of resources. Community representatives for the forest concessions are often the ones who are most active in other community tasks. This does sometimes lead to a concentration of power - and, hence, inequity and conflict - among certain members or families within the communities. Few women are at present members in the local organizations or among the representatives at ACOFOP, but the latter develops a gender program that actively seeks to involve women. According to local communities' representatives, the opportunities related to certification should go beyond commercial objectives and contribute in broader terms to the entire community's socio-cultural well-being. In keeping with this vision, the concern for building a governance system that allows equitable cost and benefit sharing becomes central. Such a system implies participatory decision-making and management as well as effective conflict resolution mechanisms.

NGOs

As said earlier, NGOs are given a key role in the management of the multiple-use zone of the Maya BR, but in the longer term, the idea is that the NGOs gradually step out - once this technical transfer has been provided. Some NGOs have, however, a tendency to monopolize control of business management and to act more as timber traders than as facilitators. There is some discontent and disillusion among local communities about this outside assistance, much of it having to do with equity questions related to financial resource management and low effectiveness of certain projects. However, it is also recognized that without NGOs,

³³ Personal interview with Luis Alfonso Argüelles, Programa Selva Maya, Marcedonio Cortave, and Ileana Valenzuela, ACOFOP, May 2001.

under present conditions, the local resources and capacity for satisfying FSC certification requirements would not suffice.

The State

Even though the state still owns the land in the multiple-use zone of the Maya BR, it has actually devolved the management of its forests by enabling the establishment of community concessions. While devolving management, the state has still defined a clear framework of responsibilities and rights within which the community-based forest management occurs. Actually, the state has further delegated its role in controlling forest management to third party certifiers by legally requiring that the community concessions be certified within the 3 years following their establishment. Although this management policy clearly has a positive impact on forests and communities, the state as well as governments and related donors from abroad (including the World Bank) do not take seriously enough their responsibility in lessening the pressures on the forests of Petén that stem mostly from outside the forest and the local communities; that is, from other sectors, such as agriculture or cattle ranching, energy, commerce, and transport.

The Intermediaries and Consumers

Although intermediaries are key in developing access to international markets for the timber coming from the community concessions, the intermediaries often seem to get confused about who should be their local interlocutor among the various community representatives and NGOs. Interviews with community producers show that communication is neither satisfactory for them, they feel rather powerless in having any influence on remote, multiple, and largely unknown intermediaries, processors, and buyers. In fact, there is very little information flowing back from consumers - through various processors and intermediaries - toward the local forest communities of Petén.

LEARNING FROM PETÉN: SOME CONCLUSIONS AND OPEN QUESTIONS

The certification process in this case of the multiple-use zone of the Maya BR comes more as a posteriori confirmation that the management of the forest is “sustainable”. Indeed, the law requires plans for the sustainable use of the forests as a condition to obtaining a concession. However, CONAP’s requirements do not fully encompass the tripartite approach of the FSC, which includes, in addition to conservation objectives, economic and social objectives. The FSC should more proactively promote these two latter types of values - for instance, by considering the safety of workers tapping *chicle*.

The case of Petén offers an interesting experience in combining FSC certification with protected areas management, and it shows an effort to move away from an exclusive approach to conservation to a more integrated and inclusive approach. Open questions remain, such as whether the spirit and effectiveness of FSC certification gets lost when it is made a mandatory process. Is such collusion with governmental organizations detrimental to the self-development capacity of local communities?

For all actors taking part in the management of the Maya BR, the FSC certification contributes to the solidity of the governance framework, mainly in terms of the credibility it provides to the local communities, the state agencies, and the NGOs.³⁴ For the local communities, after the climate of insecurity they have experienced over many decades, certification provides a precious outside support and actual legitimacy to their uses and rights over land, forests, and related resources.

Certification provides an incentive for communities to enhance their entrepreneurship. However, with the overall difficult local socioeconomic and, frequently, climatic conditions; little support from the state; rather insecure back up from international donors; and difficult access to markets that are furthermore capricious and not inclined to pay for the extra costs of sustainable forest management, it is a true challenge for the local communities to develop some relatively autonomous capacity for sustaining their forests and livelihoods.

If the FSC certification process strengthens local communities' organizational efforts at enhanced transparency and accountability, one may wonder whether the other actors of the market chain are also making similar efforts. Primary producers seem to have little information or opportunity to negotiate more equitable cost and benefit sharing with the other actors of the market or more distant stakeholders.

More research would be needed for estimating to what degree the certification system has brought the local communities of the BR to develop timber production catering to international markets at the expense of other forest uses and livelihood strategies, possibly oriented more toward domestic and local markets. Isn't there a risk that such global certification systems contribute to further eroding cultural and environmental diversity?

Even though there are only a few years of experience with community forest concessions in the Maya BR, some successes are already visible: Forest fires and entry of settlers in the zone have declined. A less visible part of the success is the development of a participation culture based on - to a large extent - self-mobilized experiential learning processes. This is clearly demonstrated by the quality of public meetings organized in the villages. Such enhanced participatory governance capacity is probably the greatest asset for sustainability, improving both the quality of life of the local people and the quality of their environment. The collaborative organization and learning capacity we have presented in this case clearly involves not only members of local communities in Petén but reaches across regional, national and international boundaries, involving a variety of actors from governmental and civil sectors. Certification appears to be one of the vehicles for developing such linkages.

The timber certification process is only one of many activities local communities organize for improving the management of their local resources and developing their livelihood basis. The overall governance context across various institutional levels needs to be taken into account when one assesses the impact of - and future opportunities and limitations of - a particular certification scheme in a given region. Such assessment should involve, as much as possible, all actors concerned in order to build learning capacity across

³⁴ Personal interview with Luis Alfonso Argüelles, Programa Selva Maya, Marcedonio Cortave, and Ileana Valenzuela, ACOFOP, May 2001.

the entire production - marketing and consumption process and across all related policy decisions that foster a certain allocation of benefits and costs, of rights and responsibilities.

If there is some slowing down of deforestation in Petén, it is still not halted, much less reversed. The many combined pressures on the Mayan people's livelihoods and on the forest ecosystems, coming mostly from outside the forestry sector and from beyond local communities' control, continue quite unabated. Obviously, these pressures are also beyond the reach of any kind of forest certification system.

The people living in Petén seem nevertheless to know a lot about the importance of sustainability. As they so often stumble over the 1,000- year-old stones of their ancestors - the Maya - they keep on remembering that deforestation, overpopulation, and poor governance lead to social conflict, climate change, and, quite soon, extinction, however amazing a civilization's science and art may be.

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WHAT IS MEANT BY PUBLIC PARTICIPATION IN FOREST CERTIFICATION PROCESSES? UNDERSTANDING FOREST CERTIFICATION WITHIN DEMOCRATIC GOVERNANCE INSTITUTIONS*

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1 INTRODUCTION

Certification of sustainable forest management (SFM) practices grew from frustration with the inability and often unwillingness of governmental agencies and programs to embrace sustainability as a normative principle for social control. This frustration launched a “sustainability movement” following the 1992 World Conference on Environment and Development in Rio de Janeiro, Brazil. While sustainability was not a new word or even a new policy concept, after UNCED a social movement grew around the world and in policy arenas generally dominated by economic profitability, not sustainability (Caldwell 1990). In the forest policy arena, nations joined together in developing sets of Criteria and Indicators of Sustainable Forest Management that should be applied by member countries. These cross-national policy discussions also led to agreement that all countries would develop integrated, holistic, participatory “national forest programmes” that expressed a national policy for forests and took account of cross-sectoral policy impact and dependencies (Glueck, et al. 1999).

In parallel to these national and governmental processes, consumers, environmentalists, wood based industries, and others joined together to develop a way to give value and incentives to the practice of sustainable forest management. In 1993, in Toronto at nearly the same time that the governments were developing the Montreal Criteria and Indicators for Sustainable Forest Management, these groups met to create the Forest Stewardship Council. The FSC used much the same process of developing Criteria and Indicators for SFM as the governments did, but with the difference that they used very specific, measurable indicators related not just to management decisions but to actual

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outcomes. The idea was to reshape consumer behavior by creating a value for products from sustainably managed forests and by “branding” these products in hope of giving a price premium to the producer. In order to develop a set of Criteria and Indicators of SFM that could be used any where in the world, in any forest type, and within any cultural and institutional environment, the FSC developed a quasi-legislative system and applied basic democratic principles to institutional design.

This paper places sustainability directly within the discourse of democratic theory. It shows how basic democratic principles characterize the concept of sustainability, and thus frame the requirements for processes developed to achieve this broad, abstract social goal. By positioning forest certification processes within democratic theory, this paper then examines the ways and degrees to which different certification processes meet basic democratic criteria. The core problem, and primary reason for, strong democracy in forest certification systems is political legitimacy. As quasi-legislative processes that are aimed toward developing specific standards for private and public behavior, forest certification systems must achieve sufficient legitimacy to be adopted by individuals, communities, business enterprises, and public agencies. This paper tries to develop a framework for thinking about forest certification as a democratizing institution in hope of leading to a richer appreciation of certification systems along with new research questions.

2 DEMOCRATIC THEORY AND SUSTAINABILITY

In 1994, my Social Sciences Research Graduate Group at the University of Washington College of Forest Resources undertook a study of the emerging principles of sustainability by reviewing literature across all disciplines and around the world. They developed a short paper titled, Principles of Sustainability, succinctly summarizing common principles of sustainability using the literature review to document the social construction of this concept. While they identified six core concepts of sustainability, they noted: “This division of sustainability into discrete principles goes against the integrative nature of the concept. None of these principles stand alone, but must be considered as interdependent components of a whole” (SSRG 1994). I list these principles below as they identified them, knowing that from the perspective of 2001 they form the core terms of discourse around sustainability.

A. Principles of Sustainability (circa 1994)

1. Maintain Ecological Functions, Conditions, and/or Biodiversity.

By maintaining habitat, ecological structures, and proper frequency and intensity of disturbances, it is believed that ecological functions and processes can be maintained. This maintenance of ecological structures and disturbance regimes, resembling those under which the organisms in the system evolved, is believed to maintain biological diversity, resilience, and self-maintenance of the system. Management must consider all spatial and temporal scales from the microsite to the global and from moments to millennia.

2. Evaluate and Adapt Social Processes and Governance Structures.

Sustainable use of resources requires the cooperative participation of citizens, communities, interest groups, and political, cultural and economic institutions at local, regional, national, and in some cases international levels. Cooperation between actors can be maximized when forums are established for diverse actors to communicate and freely discuss ideas and propose competing interpretations and options for action, when decision making processes are fair and equitable, when expert, scientific and local knowledge are integrated, when resource production dependent communities are reasonably certain of an acceptable level of economic stability, and when the rights of diverse cultural and ethnic groups such as aboriginal peoples are respected and legally protected. Discussions about sustainability must take into account what political structures are best suited to meet these criteria. One of the central issues at stake is whether democratic forms of government (national, regional, and local) are the only governmental structures under which sustainability can occur.

3. Adapt to Change.

We now recognize that neither natural nor social worlds are static. Attempting to maintain resources in a steady state is not only doomed to failure, but likely will have unintended negative consequences. Instead, focus on maintaining dynamic processes. Further, people's values change, economies change, and -- over long time scales -- ecosystems change. Sustainable management includes both learning from management results, to adapt management to use new knowledge for better results, and trying to keep rates of change slow enough that both people and biological systems can adapt to new conditions with a minimum of loss of existing relationships, cultures, and ecological processes.

4. Integrate Ecological, Cultural, and Economic Systems.

Current efforts to manage resources sustainably acknowledge the integration of ecological and social systems. Economies depend on the productive capacity of ecosystems and, at the same time, ecosystems can only remain healthy if human economies are sustainable. Additionally, culturally specific practices such as property tenure systems have a profound effect on natural resources. Sustainable use integrates the productive capacity of ecosystems, utilizes resources efficiently, ensures reasonably equitable distributions of economic benefits of resource use both within and between nations, and requires economic decision making models that reduce the risk of irreversibly damaging ecosystems. Recognizing poverty as a great threat to maintaining ecosystems implies raising the living standard of all people above the poverty level.

5. Ensure Intergenerational Equity.

While we cannot know the values of future generations or future conditions of the world, it is reasonable to guess that the values of future people will be somewhat similar to ours. Those who argue for intergenerational equity argue that we should not consume all of our natural capital now, leaving none for future people. Similarly, we should try to maintain options for future people to choose among. This means we consider the extraction of resources as consumption of capital, not generation of income that would be discounted if it were delayed until a later time.

6. Accept Ambiguity of the Concept of Sustainability.

There is no objective definition of sustainability. What will be sustained, and for whom, are things we must determine through social processes. Because we value biological and physical systems and because our aggregate demands are greater than existing resources, there will be conflict. Because events occur in the world, and events are changes, and change -- be definition -- means that something which existed before no longer exists, not all things can be sustained. Thus sustainability requires choosing what to sustain.

One of the most striking findings of this research project was the near universal acceptance that the principle of democratic participation in decisions and policies was an essential element of sustainability. Thus, expert decisions and optimization models were by definition insufficient to achieve sustainability (Shannon 1999). This important principle has grown stronger since 1994 and now informs all global frameworks for sustainable forest management, nearly every national policy framework, and, as this conference demonstrates, even private "public" policy making processes. Indeed, as the 1994 project identified, local knowledge and indigenous rights were emphasized as essential elements of participation. Thus, simply involving the "key people," or "stakeholders," or "political interests," or "affected communities," or any other limiting conception of participation commonly used by governments is not sufficient under the concept of sustainability (Shannon 1999; 1998). The necessity of using open, participatory processes in policy making combined with the essential need for a search for meaning given the ambiguity of the concept of sustainability has led to new forms of governance based on strong principles of democratic theory (Shannon and Antypas 1997).

B. Democratic Theory and Sustainability

Sustainability can be located within the general theoretical discourse of democratic theory (Bellah et al. 1991; Gutmann and Thompson 1996; Sandel 1996). This means that while attention to ecological sustainability is a basic necessity, the normative impetus for sustainability is not guided by theories of ecology. One might say that this transference of basic principles of democratic governance to the public and private, local and global, national and non-national policy arenas is one of the most important consequences of the "sustainability movement." Indeed, even within the economic literature, there is a realization that local people need to have a say in development decisions (SSRG 1994).

Democratic theory is an area of social theory rather than a unified body of theoretical statements (Alexander 1990). By this I mean that it is difficult to identify a single, general theory of democracy from which all propositions regarding democratic governance can be deduced. Rather, there are many strains of democratic theorizing related to legislative and non-legislative processes, electoral and non-electoral forms of representation, formal and informal methods of participation, and so on. However, there is a recognizable set of concepts that most theorists of democracy would accept as essential elements.

Relevant to this discussion are several key concepts central to democratic theories. Popular sovereignty means that the people are the source of political authority, which they

can delegate but not abdicate. Transparency of decision making means that open processes that reveal what information was used and how as well as the criteria and process for making a decision are the norm. Legislative superiority over functionaries means that agencies and other experts are accountable to the people, often through their elected representatives, and must justify all decisions within the limits of their delegated legislative authority. Policy discourse advances through a balancing of public interests typically in a basic utilitarian framework of “benefits and costs.” Reasons must be given and accepted as legitimate by those affected by the decisions. Representation is based upon political equality. This means that how a society defines itself must inform the practice of representative decision making. Since identity cannot be imposed from outside, every society must engage in an identity formation process.

Taken together, these concepts create a picture of a self-governing society, with enough cultural stability to form the basis of representation, with an open and transparent policy process, and with clearly defined avenues for the exercise of authority. While not quite a Garden of Eden, conflict and arbitrary power are sufficiently controlled so as to not completely destabilize the society. While this is hardly a comprehensive or definitive list of core concepts of democratic theories, it is sufficient for our purposes today.

What is the responsibility of the public when popular sovereignty is the basis of political authority? Daniel Yankelovich (1991) in Coming to Public Judgment identifies three essential roles for the public in a democracy: public deliberation, public judgment, and public accountability. He argues: “The purpose of public judgment is to achieve knowledge of how people can practice self-governance in a fragmented and unruly world” (Yankelovich 1991:222). The concept of self-governance means that people, through processes of public deliberation, can create the knowledge necessary to make public judgments as to purposes, goals, and desirable and ethical means of achieving them. Yankelovich addresses this issue of “knowledge” produced by public judgment at some length in order to counter claims that only scientific knowledge counts as knowledge. He argues that “knowledge consists of truths, interpreted with a framework of purpose, which enjoy strong validity claims” (Id:222). Thus, the processes of public participation in public deliberation forms the basis for truth claims upon which public judgments can rest. Further, meeting the strong validity test means achieving strong political legitimacy through public accountability processes and mechanisms.

Obviously self-governance must be a communicative process.

“The main precondition of self-governance (and perhaps global survival) is the simple, fundamental ability to communicate with each other across barriers of individual differences in interests, nationalities, cultures, and frameworks for the purpose of setting common goals and the strategies for achieving them” (Id:223)

Understanding democracy as “communicative action” recognizes that first, and foremost, political discourse is communication. It is communication aimed at establishing understanding through consensus on meanings (Stanley 1990, 1983). It is the conversation that creates and shapes cultures and identities (Thompson and Schwartz 1990). It is the talk that

leads to the walk as institutions and organizations grow from new preferences, value commitments, and allocations of resources (Wildavsky 1987). It is the conversation that builds community, recognition of common purpose, and empathy for human differences and conditions (Shannon 2001a). The Good Society depends upon good political talk (Bellah et al. 1991).

This kind of talk is a form of social action: communicative action. Communicative action creates shared understanding through public deliberation within a "community of interpretation" leading to mutually defined social goals and a common vision of desired outcomes (Shannon 2001a). Thus, communication is the key process for creating and maintaining governance institutions (Brown 1989). Habermas (1973:151) makes a critical distinction between "strategic" and "communicative" action. Strategic action is driven by goals and purposes, where as communicative action derives through discourse knowledge, understanding, and purposes. Communicative action occurs through the reaching of a consensus of understanding and, Habermas argues (Id:18) must meet four validity tests.

This underlying consensus is formed in the reciprocal recognition of at least four claims to validity which speakers announce to each other: the comprehensibility of the utterance, the truth of its propositional component, the correctness and appropriateness of its performatory component, and the authenticity of the speaking subject (Id:18).

The test of comprehensibility is realized through the ability of participants to communicate with one another, measured by the degree to which they develop a common language with shared reference in terms of context and situation (Mansbridge 1990, 1980). However, the claims to truth and normative correctness can be proven only through discourse. The authenticity of the participant is revealed in the process of dialogue (Forester 1996, 1995). These four tests give us some measures by which to analyze the processes of public judgment.

This paper begins with the assertion that forest certification systems are all forms of communicative action. They are all means of "coming to public judgment." They are all efforts to develop legitimate public policy through non-legislative, non-electoral processes. Thus, we might expect that their legitimacy depends on meeting the criteria for democratic practices in a strong, visible, and acceptable way.

Taking the responsibilities of the public together with the necessary qualities of communicative action, a conceptual framework for examining and to some extent evaluating forest certification systems emerges. The central responsibility of the public in a democracy is "public judgment." To meet this responsibility, there must be places and processes for public deliberation. It is these processes of public deliberation that must meet Habermas' tests of communication action. Thus, the process of deliberation must: develop a consensus of meaning and understanding; create true statements of conditions, situations, and desired conditions; establish the moral and ethical basis for normative claims of purpose and outcome; and ensure the authenticity of the participants (Habermas 1973:18). The following sections will describe several main certification systems and then analyze them based upon this framework.

3 DEMOCRACY AND FOREST CERTIFICATION PROCESSES

While not all forest certification processes are alike, they do all draw upon democratic principles in their basic design and process. Some, like the Sustainable Forestry Initiative of the American Pulp and Paper Association in the United States, involve industry, business, and landowners within a voluntary framework of self-regulation based upon a set of principles for sustainable forest management. However, one key reason why these groups would engage in voluntary self-regulation is to restrict the reach of government regulation of private forestry practices. The Pan European Forest Certification process rests upon similar principles of sustainable forest management, but seeks to maintain the existing distribution of power to agencies, landowner associations, and national policy. In contrast, the Forest Stewardship Council includes business, industry, consumer and environmental NGOs in a set of policy roundtables designed to function outside of government processes and as intermediary to communities and businesses.

The SFI is designed to work within the U.S. legal and economic systems, and thus can take for granted the existing laws, regulations, and other key institutions, like property rights. The PEFC is designed to work across national boundaries, but within the context of democratic governments in Europe and their laws, rules, and institutions. In contrast, the FSC is purposely designed to work anywhere in the world, under any governmental system, and does not assume a supportive legal or institutional framework. As a result, the FSC incorporates basic “governmental” elements, but within the sustainability paradigm.

The FSC is organized into a quasi-legislative structure: an International Board of Directors; a General Assembly with three Chambers - Social, Economic, and Environmental - each with one-third of the voting power and each divided into two sub-chambers, Northern and Southern; Regional Standards Committees to develop regionally specific criteria and indicators; accredited Accreditors to do third-party certification audits; and openly publicized national and regional standard-setting processes (Meridian Institute 2001). Members join voluntarily and are assigned to the appropriate chamber (business to economic, etc.) where their “vote” receives the predetermined representational weight - 1/6 by chamber and north-south assignment.

A. Public Deliberation in Standard-Setting and Certification Practices

There are two kinds of participation in forest certification processes. Representative participation occurs in the standard-setting process, not unlike a public policy making process that results in rules along with implementation and enforcement mechanisms. Public and community participation occurs as part of the implementation and enforcement processes. Representative participation can be assessed by standards applied to elections in democratic governments. There the expectation is that all sectors of society will be “represented” so that decisions reflect the interests of the people, although in practice the decision is based on “majority rule” which may or may not protect minority interests. The SFI defines representation in terms of the forestry sector and through consultation processes with other interested and affected parties. Because it is located within the U.S. governmental system, the existing laws and regulations provide the larger political context for legitimacy.

The PEFC relies on political definitions of interest already manifested in agencies, landowner associations, and interest groups in European political systems. Only the FSC takes very seriously the necessity of a rigorous approach to representational participation because it assumes that political legitimacy is the primary need in the standard-setting process.

Public and community participation are also different for each system. The SFI has made little provision for public participation in the past, but the Sustainable Forestry Board is now seeking greater public involvement (Meridian Institute 2001:5). The PEFC thus far has relied on essentially freestanding deliberative processes, such as the Helsinki process, combined with national working groups composed primarily of industry and governmental officials, although recently they have stressed involvement by small landowners. Interestingly, much of SFI and PEFC deliberation has implicitly and explicitly involved reacting to the FSC rules and standards. The FSC seeks open participation in the standard-setting process through consultation with “non-member” stakeholders and other public groups. The regional level standards are designed to provide an accessible forum for members, stakeholders, communities, and the public to participate in shaping regionally specific standards within the framework of national standards. Since certification itself generally involves a private entity, the public role is directed more towards accountability than direct participation. Thus, FSC certification requires public summaries of certification evaluation reports, the certificate holder’s management plan, and the results of periodic monitoring of the certified forest (Meridian Institute 2001:4). The extent to which communities participate in the certification process in order to represent their interests is the subject of the Markopolous paper (this volume).

B. Communicative Action and Public Deliberation

The question from our conceptual framework is whether these modes of participation are “communicative action” and meet the requirements for public deliberation.

Let us start with the issue of “*authenticity of the participants.*” Authentic participation from a communicative action perspective is “non-strategic” and aimed towards consensus in understanding (Habermas 1973). Since authenticity can only be assessed by examining the nature and content of the discussion, it remains here a largely unanswered empirical question - but a very interesting one. All three certification systems are organized within the normative principles of sustainability. Are these principles strong and determinative enough to allow only strategic communication? While recognizing that empirical analysis is needed here, one can still develop some propositions for examination. Since sustainability is by definition an ambiguous concept, coming to consensus in understanding its meaning requires communicative action within a specific context and problem area (Reich 1985). Thus, whether a certification system creates an opportunity for authentic participation aimed at defining purposes and norms depends on how it is designed and how it operates in practice (Wildavsky 1987). Since reaching understanding is the key test of communicative action, then we can say that the more that prior definitions and goals are brought into the deliberative process, the less the process is one of communicative action and the more it is

one of strategic action. Thus, at some point, policy discourse moves from communicative to strategic action and the expectation for participation must fit the situation.

Certainly representative participation assumes that interests have strategic goals in mind prior to the discussion and dialogue. One might ask whether the very nature of the SFI and PEFC is designed as a strategic exercise that deploys the concept of sustainability as a tactical resource, rather than seeks to fill it with new meaning and understanding. What about the FSC system? Here the problem seems more complex. On the one hand, the FSC emerged from a desire to reshape political discourse and transform social choices. On the other hand, those who organized the initial meetings probably had strategic goals in mind and felt they could only or best be achieved through a new institution rather than adjustments in old institutions. Moreover, the chamber structure appears to be inherently representational. Thus, it would be an empirical question to examine whether the kind of participation now occurring within the three Global Chambers and at the regional groups are genuinely “authentic” as communicative action designed to develop understanding and knowledge.

To some degree, it is important to recognize that even if participatory processes are genuine communicative action, they may not be fully democratic. While authenticity is a key element for communicative action, being “at the table” is an essential first step! So while participation is perhaps the strongest core principle of democracy, it is also continuously subject to limits in practice. Limiting participation can occur by how representation is defined, what kinds of processes are designed, the cost of participating, the benefits to the individual or stakeholder of committing time and effort to the process, and whether those resisting the process are included as “participants” or are excluded. The easiest and most common way of limiting participation is through the definition of “representativeness.”

If representation is based upon “objective” categories of society (for example, gender, ethnicity, race, caste membership, religion, interest group), then the degree to which power converges with these categories restricts the agenda to “safe” issues. While representation is based upon the principle of “political equality,” in practice it is difficult to define what equal means in terms of how society is internally defined. In the U.S., for example, political equality for the purposes of voting in elections once included only white, male, property owners. Today race, gender, or property ownership no longer restrict voting rights, but prisoners are stripped of their rights to vote and those under the age of 18 are deemed to young to have political equality.

If we evaluate these certification processes against basic democratic principles, then who is participating in these certification processes is an important clue in terms of what “political equality” means in practice. The concept of “stakeholders” identifies those who “should” be involved in these processes, and thus answers the question of “who” is to be represented. Since these processes are parallel to public policy processes and not subsuming entirely the role of governments or the legislative function of political society, then should a stronger standard of inclusiveness be applied in evaluating the question of “who” are defined as “stakeholders?” For example, both the SFI and PEFC narrowly define stakeholders to include primarily industrial and/or governmental interests. Indeed, in the SFI process, the industrial interests clearly set the rules and justify limited public participation based upon a theory of private property rights. While the SFI purports to increase the degree to which

private interests voluntarily comply with SFM standards, in actuality these standards and management practices are those to which all members agree to follow.

In the abstract, the question of inclusiveness of representation is unanswerable, because there is no single, definitive standard against which to measure representativeness or, for that matter, adequate political equality. In practice, however, more specific questions can be asked; for example, are some interests systematically excluded so as to ignore and hopefully nullify their stake in the decision? Are processes designed to restrict participation through timing, location, presentation of technical information and so on? These more specific questions can serve to identify more or less open and democratic qualities of certification processes (Schattschneider 1960).

In principle, participatory processes are open to all citizens based on the concept of political equality. In practice, actual participation is limited not only by categories of social structure (interest groups, for example), but also by the willingness and ability of citizens to participate. Democratic societies based on direct participation in all matters are too exhausting and cumbersome for most people! Thus, representation seeks to replicate the social values and interests of society that would be there if everyone is around the table. However, this means that the values and interests of individuals are already recognized, articulated, and organized so that they can be “represented.” Yet, in what social contexts were these values and interests recognized or defined? When and where did people confront a challenge to something important to them and recognize that they needed to defend this interest or value? Generally, social conflict generates social values and interests and creates new social groups.

Next we can examine the idea of “*comprehensibility*” of what people say to each other. Can they understand each other? Understanding generally means reaching across differences of experience, knowledge, identity, and status in order to reach a meaning shared by all (Schneekloth and Shibley 1995). By its very definition, public deliberation rests on principles of conflict (Coser 1956). For example, conflict is necessary for identity formation (Coser 1956), so the deliberative process needs to clarify boundaries of difference by making them visible. Differences in perspective, values, and knowledge are all important elements in creating the kind of knowledge we can put our faith in as “true.” So while public deliberation is discourse in which a variety of perceptions, interpretations, claims, and contentions are commonly deliberated, it is a discourse of conflict and difference (Shannon 2002 a, b). Political discourse by definition embraces conflict as a means to consensus through discussion, not force (Dryzek 1990).

However, the kind of political discourse needed for public deliberation is different than what we think of as strategic political influence. First some definitions:

Generative politics generates new values, new interests, new understandings, new categories of social life, new priorities in utilitarian policy analysis, new criteria for legitimacy and accountability of public decisions through communicative action.

Representative politics responds to existing values and interests, is guided by current understandings of issues, interests and priorities, and utilizes accepted criteria for evaluating legitimacy and accountability of decisions through strategic communication.

Generative politics occurs in democratic institutions using open and public participatory processes (Thompson and Schwartz 1990). Most importantly, generative processes lead to a focus on the “desired future” and incorporate the capacity for change and learning through experience (Shannon and Antypas 1997). Generative politics are inductive so differences in values, situation, context, and interests mean that different social actors have different visions of the world (Shannon 2001 a, b; Dietz et al. 1999). Representative politics with stable and organized interests can utilize a strategic approach, wherein the goals are assumed at the outset from an ideological or moral standpoint and the means debated (Shannon 1999; Stanley 1981). In contrast, in generative goals arise through deliberation and from practice and generally reflect pragmatic compromises among social actors (Forester 1989). As a result, generative politics often creates more lasting and stable policies, because the role of participation is not merely to legitimate predetermined choices of goals and means (Nonet 1980), but rather to create new purposes and new knowledge (Shannon 2002 a, b). Ideally, for public deliberation to be communicative action, participatory processes will be characterized by generative politics; they generate and clarify social values and interests.

C. Political Legitimacy and Public Accountability

We can turn now to the questions of “*truth*” and “*normative appropriateness*” of the knowledge created through public judgment. For the purposes of this paper, I will assume that the criteria and indicators developed by each certification process are “true” in terms of their claims of scientific and normative validity. I can do this because forest certification of sustainable forest management is part of the social movement around the concept of Sustainability. Thus, all certification efforts fall within a global governance framework that emerged from three decades of world conferences on the environment (Caldwell 1970). In “Our Common Future” (1987), the World Commission on Environment and Development defined sustainability as meaning meeting the needs of this generation without compromising the ability of future generations to meet their own needs. This is a generally accepted idea of what sustainability means in the abstract, and it remains to specific efforts, like forest certification, to translate it into actual social norms and institutions. There have been numerous efforts by governments as well as these non-governmental processes aimed at specifying what “sustainable forest management” means. The Criteria and Indicators developed by these diverse efforts, with thousands of very different kinds of people participating from all parts of the globe, have generated a fairly stable set of concepts that are generally accepted as “true.” Thus, for the moment, I will set aside this question and leave it to further research.

The question of “*normative appropriateness*” leads us back to asking whether participation meets the basic requirements of democratic theory. The standard of legitimacy for representative politics is familiar: are the interests of society represented sufficiently (proportionately) in public policy and decisions? Is political voice provided equally to all? Legitimacy, however, is a central problematic for generative politics: under what conditions and with what level of support is change warranted? This is more of a classic research question and brings us to John Dewey’s conception of politics as public deliberation: “The

essential need ... is the improvement of the methods and conditions of debate, discussion, and persuasion. That is the problem of the public" (Dewey 1927).

Both the SFI and PEFC certification processes are mostly concerned with representative politics and rely on existing stakeholders and interest groups to develop mutually agreeable standards for sustainable forest management. The FSC, however, recognizes that in many places in the world such interests and stakeholders that do exist are beneficiaries of "non-sustainable forest management." Thus, participation in standard-setting must necessarily be a learning process for the stakeholders and members as well as the interest groups, organized and un-organized, communities, indigenous people, and individuals who may not recognize the need to participate at the outset of the process. Thus, the standard-setting process needs to engage people in an identity-formation process such that they recognize their interests and values, shape priorities for making choices, and develop processes they mutually accept as generating legitimate outcomes. This makes for a quite different kind of public dialogue, especially as local and regional parties work with national and global groups and organizations.

When public dialogue focuses on what to do, why to do it, and who needs to do it, then a process of public deliberation that is accountable to social knowledge and is fully transparent is essential for the outcome to be recognized and accepted as a politically legitimate choice. Public deliberation is discourse in which a variety of perceptions, interpretations, claims, and contentions are commonly deliberated with respect to desired outcomes (Shannon forthcoming, 2002c). In policy arenas like sustainable forest management, scientific knowledge and technical information play a crucial role in ensuring the public accountability of decisions and policies (Buttoud 2000; Lee 1993). In like manner, consideration of economic outcomes and social consequences are also critical elements for building legitimate decisions that can be held accountable to standards of social justice and equity. Furthermore, the concept of social knowledge needs to remain a broad and loose category in order to ensure that forms of knowledge often obscured or excluded in "utilitarian policy analysis" are given voice and strength. Thus, the kinds of "reasons" developed in a deliberative process generally encompass much more than simple economic measures or technological logic common to public policy processes.

Meeting the test of political legitimacy is enhanced by methods of public accountability. The SFI requires companies to certify each year that they have met the SFI standards and have the necessary environmental management systems in place. Although the PEFC has adopted third-party auditing in principle, not all management units are audited, rather a sample is selected through a process that is still under development. Given that PEFC covers many, quite diverse, European countries, it is an interesting question for future research whether the auditing system fits within other political accountability institutions within the country, replaces them, or fill an unmet need for the perspective of public accountability. Only the FSC demands full third-party auditing for every certified forest every five years, with spot checks annually. Thus, these forest certification systems, operating in parallel to other social and political institutions, have each addressed the question of providing for public accountability in order to establish their legitimacy. An interesting

research project will be evaluating the extent to which these mechanisms for public accountability are sufficient for building viable political legitimacy.

Growing “the Public”

Taken for granted in democratic theory is the existence of “the public.” But “the public,” as Dewey (1927) reminded us, only comes into being in the context of a “public” question. Sustainability brings once private questions of property, management, and allocation into the public realm by asserting that our common survival depends upon public virtue in private decisions (Schattschneider 1960). Forest certification systems, each in their own way, create the public by posing public questions regarding how forests are managed, for whom and by whom, with what effect on surrounding communities, workers, and indigenous peoples, and so on. These questions are not answerable through the private decisions, but the answers must be created within a public realm and used by private entities to ensure our common future.

Sustainability moved once private questions into the public realm. However, there was no natural public forum capable of addressing the kinds of questions and dilemmas raised by the concept of sustainability - it is a global dilemma. Thus, a variety of new governance institutions are emerging to address the problems of sustainability and each one must first “generate” a public. Thus, the kinds of generative politics discussed above are a necessary initial step for public deliberation - first, a public needs to come into being. Since these governance institutions function outside of and parallel to governmental and international institutions, their “public” extends beyond simple concepts of national citizenship, affected interests, stakeholders, and other instrumental ways of defining the public. Rather, the “public” for sustainability is everyone. Each certification system activates a different segment of “everyone” creating differences in both political reach and possible outcomes (Wildavsky 1989).

Recognizing that the public is a creation of public processes is essential in asking the right questions of participatory processes. For this means that when the public is not simply the “sovereign people” of a democratic state, then its nature, its authority, its modes of accountability, and its very legitimacy must be created by the governance process itself. Each of these certification systems has, in different ways, created a public and answered the questions as to its authority and legitimacy. The most limited public is related to the SFI, which attempts not to create a new public but embed itself within the U.S. polity. The most extensive public is the FSC, which includes everyone in the world and seeks to extend legitimacy to interests (communities, workers, indigenous people) often left out of political processes. The FSC has the goal no less audacious than creating a global public to which private and national actions must be accountable, and to which governments must appeal to maintain their own political legitimacy. Public questions open the door for the public to be self-organizing and develop new, innovative and often politically critical institutions. It is worth watching these certification processes over time in order to better understand the emergence of a public capable of global governance.

4 CERTIFICATION SYSTEMS AND GOVERNANCE

All forest certification efforts seek to fulfill a strong political commitment to “sustainability” by creating a common interest in stewardship across ownership boundaries, government agencies, nations, and cultures. By reaching into what is assumed to be a shared interest -- survival -- superficial differences of interest, position and wealth are reduced to constraints on choice rather than determinates of choice. Thus, all private landholders are assumed to want to continue to have a valuable asset in their possession. All communities drawing on forests for their sustenance and survival are assumed to want to continue this life pattern. All businesses that utilize forest materials as inputs into their production processes are assumed to want to continue to do so. By simply assuming that people want to continue depending upon forests for sustenance, resources, and pleasure, sustainable forest management can provide processes and tools to achieve this common purpose.

This is a deceptively simple solution to the very large differences in who owns and controls forests and access to forest resources. It is this complexity that forms the key challenge for forest certification processes. Yet, each system of certification approaches this complexity somewhat differently from a governance standpoint. The SFI system essentially recognizes the growth of the “sustainability” movement and perceives that increased demands for democracy in terms of participation and transparency will affect private forest management. As a result, the SFI system sets up a structure that has opened gradually to respond to potential challengers. But it still relies upon a membership base committed to preserving their ownership and control of forest lands, resources, and production to “voluntarily” adopt a set of management principles and reporting mechanisms.

The PEFC system is attempting to bridge the differences between European countries in ownership of forest lands, percentages of public vs. private forest lands, and large differences in the contribution of forest resources to the national economy. Thus, the PEFC process has adopted the idea of “group certification,” first developed by the FSC, wherein many small forest land owners can be certified as a “group.” Often, this process is facilitated by owner cooperatives or owner associations that can undertake the actual work of certification.

The FSC system, designed to work in places lacking basic institutional capacities as well as where there are strong institutions, explicitly requires the inclusion of community and indigenous interests in the outcomes of sustainable forest management, not just the process. This is an important difference and one that in countries that have adopted FSC as well as either SFI or PEFC certification, may lead to significant differences in the actual outcomes of sustainable forest management practices. In other words, the FSC certification process and the use of third party verification of forest management practices aims toward ensuring that the desired outcome of sustainability is being achieved through sustainable forest management. The specificity of the indicators in the FSC system and the degree to which accountability is mandatory are defining qualities of a strong governance system.

Thus, within a multilevel governance system (Benz 1999), forest certification systems function to vertically integrate global with local principles and to create horizontal networks across actors and organizations at every level of government (Shannon 2002a, c). It is these

integrative roles that distinguish forest certification processes from other efforts to regulate forest management. Forest certification processes can play an important role in building governance institutions and capacity by extending the reach of the public into the realm of the private through recognition that “there is only one Earth.”

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SECTION IV

POLICY MAKING

GLOBAL GOVERNANCE AND FOREST CERTIFICATION: A FAST TRACK PROCESS FOR POLICY CHANGE

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1 INTRODUCTION

The study of public policy processes is normally based on time frames of a decade or more. A number of reasons justify this approach. For example, the literature on policy implementation suggests the need to use perspectives of at least ten years to obtain a reasonable assessment of programme success or failure (e.g. Hogwood and Peters 1983). Similarly, Weiss (1977) presents the view that a focus on shorter-term decision making will tend to underestimate the influence of policy analysis on the perceptions of policy makers. Finally, the “stages” model of the policy cycle (e.g. Jones 1977) assumes that a decade or so is required to move from problem identification to programme implementation.

Forest policy is normally considered to be a branch of public policy (Cubbage, O’Laughlin and Bullock 1993). It has a number of special features, however. The most important for the purposes of this article are that trees grow slowly compared to other crops and are usually harvested several decades after planting. This means that the time frames for forest policy analyses tend to be even longer than in other areas of public policy. The second feature is that until recently forest policy processes in most countries were dominated by a few actors such as government forest departments, private forest owners and forest products companies, with little involvement of other elements of civil society. The term “governance” has come to be used to describe the interaction of actors and policies (“polity, politics and policy”) in a sector in a way that improves transparency, efficiency and equity.

However, since the early 1990s both of these features of forest policy have come under challenge in a number of countries. The crisis of deforestation in tropical forests which attracted international media attention beginning in the late 1980s, and subsequent recognition of problems in temperate forest management, led to an urgent search for policy instruments to promote sustainable forest management. Forest certification was promoted from 1990 onwards, initially by international non-governmental organisations (NGOs) such

as Greenpeace, WWF and Friends of the Earth, as such a policy instrument. Meanwhile the broader concept of “ecosystem management” was developed by scientists and policy-makers as a comprehensive, globally valid belief system to address social, economic and environmental aspects of natural resource management (Schlaepfer and Elliott 2000). Forest certification is a process which results in a written certificate being issued by an independent third-party, attesting to the location and management status of a forest which is producing timber (Baharuddin and Simula 1994:9-10). Certification can lead to ecolabelling of wood products, which can allow environmentally sensitive consumers to preferentially purchase wood from well-managed forests. Certification can be classified as an indirect economic incentive with two main objectives: improved forest management and better market access for certified products. By mid - 2001, over 22 million hectares of forests had been certified worldwide. Since forest certification did not even exist ten years before in 1991, this represented unusually rapid policy change for the actors involved. The rapid policy change was not without controversy. In 1997, the Food and Agricultural Organization of the United Nations (FAO) stated that certification and labelling were some of the most controversial topics in forest policy (FAO 1997). This was in large part because certification had been promoted by NGOs and had been seen as a threat to government forest departments and the forest industry in many countries.

It is interesting to study controversial subjects. However the interest of certification as a research topic lies not only in the controversies themselves, but also in the actors and contexts involved. Forest policy is traditionally seen as a slow-moving branch of public policy, yet in certification we find cases of NGOs and private sector actors taking the lead on issues rather than government forest departments. Adoption of certification by NGOs, retailers and forest products companies is an example of rapid private policy change, which in some cases has contributed to public policy change. In terms of context, national-level developments on certification cannot be understood without reference to international timber markets and to the international forest policy debate. In short, the development of certification can only be understood by reference to increasingly globalized economies and to policy processes involving multiple actors and fora, both of which have implications for governance in the forest sector. These actors and contexts are not only found in the case of forest certification. At a time when the labelling of consumer products from beef to sports shoes is being proposed by consumer and environmental organisations in Europe and North America as a way to address social and environmental issues, the study of forest certification can yield some lessons of wider applicability as this article will show.

2 METHODOLOGY AND THEORETICAL APPROACH

In forest policy analysis, several approaches have been used in the past. These include historical, comparative and institutional studies, which tended to focus on the central role of the state (Cubbage et al. 1993). More recently, there has been a tendency to use actor-based models to study policy processes. This trend has been explained by Glück as follows:

This old paradigm of policy planning suffers from the assumed hierarchical relationship between state and society. . . . However, in pluralistic democracies, instead of a uniform decision maker, there are a multitude of political actors with varying empowerment, interests and objectives. . . . The new paradigm of policy planning focuses on governance processes which take place in policy networks or bargaining systems. "Networks" are informal groups of interacting political actors of the policy-making process. State and society are not hierarchically separated but interacting. (Glück 1997:5)

This "new paradigm" of policy networks of actors mentioned by Glück is particularly relevant is the case of forest certification where Non Governmental Organisations (NGOs) and private sector actors have taken a leading role in programme and policy development rather than the state (Biggs and Neame 1994, Willets 1996).

The focus on the **governance process** of policy development and implementation is also relevant. In their discussion on "epistemic communities", a particular type of policy network discussed below, Adler and Haas note that it is useful to understand this process in terms of policy learning. They argue that the policy process can be seen in part as a question of who learns what, when, to whose benefit and why? (Adler and Haas 1992). Seeing the policy process as concerned with learning and the use of knowledge is consistent with actor-based models (Richardson 1996). It is also consistent with the fact that many current policy issues, such as forest certification, are surrounded with uncertainty. Under these circumstances traditional power-based explanations are insufficient, and economic analysis is hampered by insufficient data. As Hecló, one of the founders of the network approach argued:

Obviously questions of power are still important. But for a host of policy initiatives undertaken in the last twenty years it is all but impossible to identify clearly who the dominant actors are. . . looking at the few who are powerful, we tend to overlook the many whose webs of influence provoke and guide the exercise of power. These webs, or what I will call "issue networks", are particularly relevant to the highly intricate and confusing welfare policies that have been undertaken in recent years. (Hecló 1978:102)

However, the multiplication of actors, issues and uncertainty could make policy processes appear random, which they are not (Richardson 1996). One of the reasons they are not is that actors can be organised into coalitions composed of individuals from a variety of organisations who share beliefs and act in concert. Sabatier developed the Advocacy Coalition Framework (ACF) of policy change partly in response to the apparent complexity and uncertainty in environmental policy subsystems in the US (Sabatier 1988). The ACF is consistent with the actor-based policy network approaches for studying policy processes, which are relevant for understanding forest certification. It provides the basic theoretical reference point for this article.

The Advocacy Coalition Framework has four basic premises.

The first is that to understand policy change, a perspective of a decade or more is required. The framework sees policy-orientated learning as one factor causing policy change and the evidence from the literature is that this is a slow, cumulative process (e.g. Weiss 1977)

The second is that over decades, the optimal unit of analysis is the “policy subsystem”, rather than individual government institutions. This approach draws on structural analysis (e.g. Hecló 1978) and the concept of subsystems is essentially synonymous with that of policy domains (Knocke 1990). The third premise is that policy subsystems will normally involve actors from a variety of levels of government, as well as from business and civil society. The fourth premise is that belief systems are central. Advocacy coalitions are seen as being made up of actors sharing belief systems. Public policies and programmes can be conceptualised in a similar way.

Figure 1 presents the ACF

In the ACF, policy change is viewed as a result of processes within the subsystem in question influenced by relatively stable parameters and external system events. At the level of individual policy subsystems, advocacy coalitions interact and seek to influence the decisions of government institutions. These coalitions consist of actors in a subsystem who share basic policy beliefs and who collaborate over time.

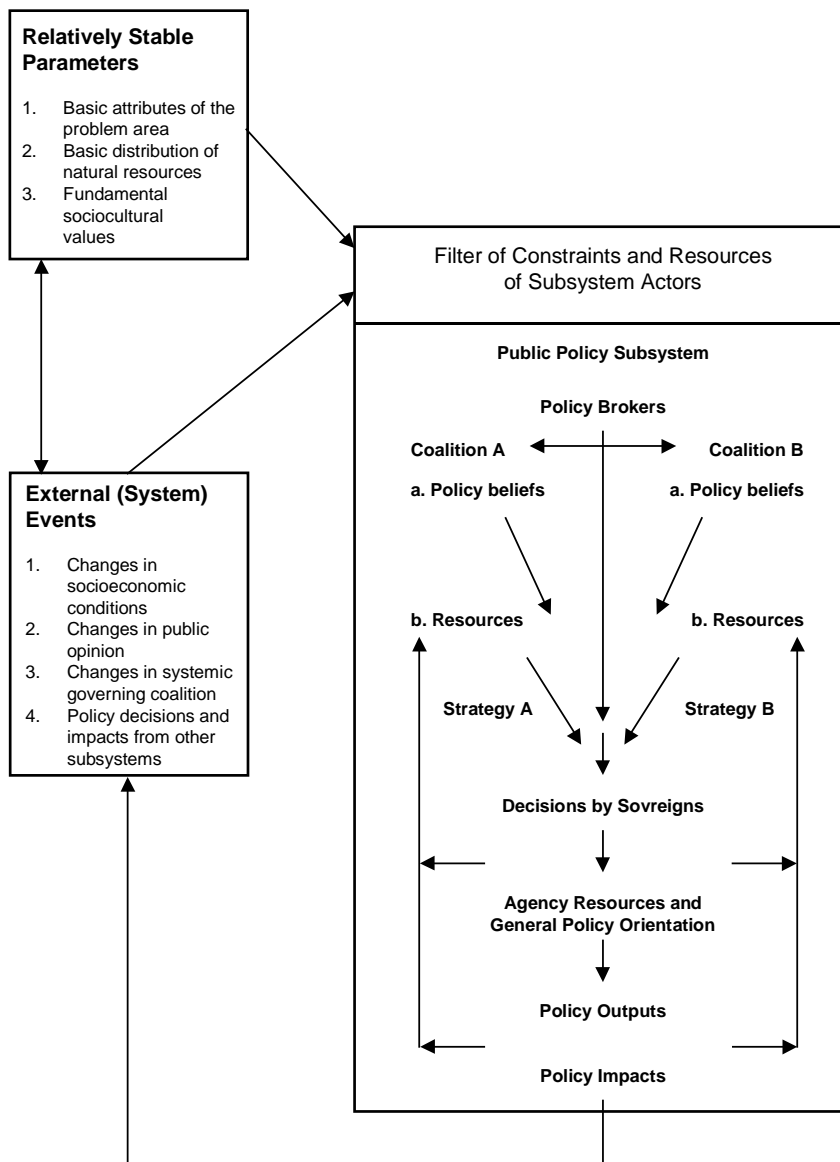
Within subsystems, policy orientated learning occurs. Coalitions will seek to “out-learn” each other and to use various strategies to seek to have their belief systems translated into public policies. However, the ACF assumes that although policy-orientated learning can contribute to policy change, major shifts in the distribution of political resources leading to modification of the core aspects of a governmental policy or programme are usually the result of perturbations external to the subsystem. The result of policy change is one or more changed or new governmental programmes that produce outputs and impacts at the operational level.

Advocacy coalitions seek to translate their beliefs into policy by using various strategies and instruments such as litigation, lobbying elected officials, commissioning research, influencing public opinion etc. It is assumed that belief systems are hierarchical, meaning that abstract (core) beliefs are more resistant to change than specific (secondary) ones. The idea of belief systems was preferred to the concept of economic and organisational interests, on the basis that it is easier to determine actors’ beliefs than their interests.

Outside the policy subsystem in question, the ACF distinguishes between stable and dynamic external factors. The combination of the two provides a set of constraints and resources that affect subsystem actors. Relatively stable parameters are usually external but may also be internal to the subsystem. Their stability means that actors rarely make them the object of strategizing behaviour. Dynamic system events are susceptible to major fluctuations over the course of a few years and are seen in the ACF as providing the major stimulus for policy change.

The ACF was originally formulated in 1988. It was then tested through a number of case studies in North America, several of which related to environmental conflicts. In general, this exercise confirmed the usefulness of the framework, but it also suggested some modifications. This testing was facilitated by the fact that the framework was accompanied by a number of falsifiable hypotheses covering its main elements. The revised version used here was published in 1993. It has been slightly modified subsequently after numerous applications, including several in the forest sector (Sabatier 1998).

Figure 1: Diagram of the Advocacy Coalition Framework



In terms of the three classical sociological paradigms described by Alford and Friedland (class, managerial and pluralist) the ACF is clearly located within the managerial-elite perspective (Alford and Friedland 1985) which sees the policy in modern industrial societies as dominated by formal organisations which compete over the collective allocation of scarce resources. The ACF is less clearly situated in terms of the division between the normative conformity/objective rationality paradigms (Knocke 1990), as it draws on both. The ACF draws on institutional rational choice (Ostrom 1990) in that its authors agree that institutional rules affect individual behaviour. However, it goes beyond them in viewing these rules as the result of strategies and activities of advocacy coalitions over time. It also places greater emphasis on socio-economic factors that most proponents of rational choice. It draws on pluralism (Truman 1951) in stressing the importance of competition between interest groups, although advocacy coalitions are not simply aggregations of interest groups since they will typically include government officials as well. It differs from pluralism in its emphasis on policy-oriented learning and hierarchical belief systems, and it rejects the assumption that all latent interests will be effectively represented.

In the research summarised in this article, the ACF was used to study the development of forest certification programmes in Indonesia, Sweden and Canada in the mid - 1990s. The research design was based on the case-study model and data was collected from key informant interviews and literature reviews. Qualitative data analysis procedures were used based on Miles and Huberman (1994).

3 RESULTS

Research for this article confirmed previous analysis by foreign observers (e.g. Gillis 1988, Richardson 1990) that the Indonesian forest policy subsystem is dominated by a close alliance between the forest industry and the Ministry of Forestry. From an ACF perspective, we can speak of a Forestry Coalition. There is a second, much weaker coalition of NGOs and social organisations that could be called the Environmental Coalition. After initial efforts by the forest industry to develop their own forest certification scheme which were rejected by the Ministry of Forestry as lacking in credibility, a national forest certification scheme was developed between 1994 and 1997 under the auspices of the Indonesian Ecolabelling Institute (LEI), an NGO supported by the Ministry of Forestry and The World Bank. Support for LEI represented a policy change for the Ministry of Forestry, which was closely linked to its coalition partner, the forest industry. From an ACF perspective, this amounted to a change in a secondary aspect of their belief system. Indeed, the support by the Ministry, NGOs and eventually the private sector for certification which is an economic policy instrument (rather than the traditional command and control instruments used to regulate the forest sector) signals a potential modification of the policy core of these actors belief systems.

Using the ACF to analyse this situation, policy change can be traced to modifications of a “relatively stable parameter” (the distribution of forest resources in the country which was being severely affected by deforestation and forest degradation) and to several related

“dynamic system events”. These were: changes in international public opinion leading to increased environmental concerns in some of Indonesia’s export markets, and the nomination of a new Minister of Forestry in 1993 who expressed concerns about the environmental impacts of forestry. Meanwhile, within the Indonesian forest policy subsystem, active policy learning was occurring throughout the 1990s based on numerous national and international research projects and publications.

In Canada, a similar situation prevailed to that in Indonesia, with a strong Forestry Coalition made up of the forest industry and provincial forest departments, facing a weaker Environmental Coalition. A forest certification system was developed between 1993 and 1997 by the Canadian Standards Association (CSA) with funding and support from the forest industry. Government (which, as in Indonesia, owns most of the country’s forests) was involved in the development of the standard. However, unlike in Indonesia, NGOs were critical of the process and most did not participate in it or support the standard.

From an ACF perspective, similar factors drove the development of forest certification in Canada as in Indonesia: environmental concerns about forest practices in key export markets and domestically. These were catalysed by Greenpeace, which was active in a co-ordinated manner in both Canada and Europe, lobbying forest products companies and their customers to respectively produce and sell “clear-cut free wood”, calling for consumer boycotts etc. However, unlike in Indonesia the industry and the government partners in the Forestry Coalition maintained a united front against the Environmental Coalition. This led to fewer interchanges between coalitions and arguably as a result, here was less policy learning across coalitions and certification did not lead to any fundamental changes in belief systems or in public policy in Canada.

In Sweden, the starting point for the development of certification was similar to the two other countries, with a strong Forestry Coalition made up of the forest industry, the National Board of Forestry and private forest owners facing a weaker Environmental Coalition. A key difference however is that most of Sweden’s forests are owned by private companies or forest owners and in consequence the role of the state in the policy subsystem is much less than in Indonesia or in Canada. Another difference is that, due to a variety of factors, relations between the two coalitions are much less adversarial in Sweden than in the other countries and policy learning across coalitions is relatively frequent. These conditions set the scene for a fundamental shift of alliances in the policy subsystem as the certification system was developing in Sweden between 1994 and 1998. The result of this change was the establishment of a new Sustainable Forestry Coalition, merging the Environmental Coalition with the large forest companies, which had previously been part of the Forestry Coalition. This left the private forest owners, most of whom did not support certification, isolated.

The certification process was driven by similar factors to that in Canada and Indonesia, but an additional element was Sweden joining the EU in 1994. Among other things, this meant that previous arrangements under which prices for forest products were fixed in negotiations between forest owners and the forest industry had to be abandoned as anti-competitive. This policy impact from another subsystem in ACF terms, certainly contributed to weakening the links between the two previous coalition partners.

4 DISCUSSION

Introduction to the fast track

From a theoretical perspective, the three case studies provided support for most of the ACF hypotheses. A detailed discussion is found in Elliott (2000).

The ACF is based on the premise that to understand policy change, a perspective of a decade or more is required. It looks to External System Events or changes in Relatively Stable Parameters, rather than strategies of actors in policy domains, as the fundamental driving forces for this change. From an ACF perspective, the result of policy change is new or changed governmental programmes that produce outputs and impacts at the operational level. In summary, policy change is likely to be slow and infrequent and cannot be directly achieved by changes in actor strategies. In consequence, we can say that the ACF is a framework for policy stability as much as for policy change.

These premises may be valid for the public policy processes that the ACF was designed to study, and the case studies by other authors cited in Sabatier (1993) generally provide confirmation of this. However, forest certification is not usually a public policy instrument. Its development has been led by NGOs and the private sector, and it has been prepared and implemented over a period of years, not decades. While the three case studies provide support for the ACF they also show that a “fast track” for policy change can be observed.

As its name suggests, this fast track is based on events that are measured in years, months, and even weeks, rather than decades. It is not only driven by external system events but by the strategies of actors who move beyond the boundaries of policy domains to influence other actors in the domain. The result is changes in the private policies of companies, which can have direct operational impacts on forest management. The fast track provides a way to link international events and actors to the national or sub-national policy domains, which are the focus of the ACF.

An example of the fast track process can be taken from the Canadian case-study. In June 1998, MacMillan Bloedel, the largest forest products company in British Columbia, announced that its policy was to meet the standards of all existing forest certification programmes as part of its new “Forest Project”, which had been approved by the company in May 1998. The Forest Project was initiated in November 1997 by the CEO Mr Tom Stephens when he joined the company, after a high profile announcement in the same month by the UK retailer B&Q that they were cancelling an order of timber from MacMillan Bloedel worth over US\$1 as a result of lack of progress of the company towards environmental improvement in forest practices and certification under the FSC programme. The Forest Project included a comprehensive review of the company’s forest policy, and recommended increased conservation of old growth forests, replacement of clearcutting and forest certification.

It was only a year before the June 1998 launch of the “Forest Project”, that the Toronto Globe and Mail reported on a series of setbacks for Greenpeace forest lobbying in British Columbia under the headline “Greenpeace Loses Support for B.C Logging Practices”. It seemed at the time that the combination of forest policy change in British

Columbia, together with astute manoeuvring by the former Premier, had substantially weakened the Environmental Coalition in British Columbia, of which Greenpeace was a part. However, as a result of this setback Greenpeace changed tactics and moved beyond the British Columbia forest policy subsystem to lobby forest companies clients in Europe and the US. The result was reportedly several million dollars of cancelled contracts including the B&Q one.

It is interesting to note the governments role in this example of fast track policy change, recalling that in British Columbia the government owns the majority of forests. As late as May 1998, the British Columbia Ministry of Forests had been trying to defuse the situation by encouraging Greenpeace and other environmental groups to join in a two-year land-use planning process in the central coast region which the NGOs had been boycotting. These efforts were unsuccessful, and MacMillan Bloedel and the other companies took the initiative to announce changes in their forestry practices, without waiting for approval from the Ministry of Forests, although it was noted that the Ministry would have the final say on approving these changes. This is reminiscent of another Greenpeace campaign in 1995, when Shell decided not to sink the Brent Spar oil platform in the North Sea, as it had been authorised to do by the British government, but to dispose of it on land (Rose 1998). The sudden policy change by the company caught the British Government by surprise and the Daily Mail described the situation as follows under the front-page headline "Shell U-turn Sinks Major":

John Major was left betrayed and humiliated last night after Shell lost its nerve and dropped plans to dump the Brent Spar oil platform. The climbdown, under pressure from Greenpeace, came only hours after the Premier gave his backing in the Commons to the controversial option. (Daily Mail 1995)

Leaving aside the hyperbole, the Brent Spar incident is the textbook example of the fast track process which took only six months from Greenpeace first hearing of Shell's plans to sink the Brent Spar, to the reversal of the decision after an international campaign which was aimed at Shell's customers rather than actors in the UK or European marine policy domain. In the end, the Shell decision to change policy was made in a few hours without the knowledge of the statutory authority, the UK government, which had been involved in previous discussions at the highest level. After this the government had no alternative but to accept Shell's decision, and subsequently changed its policy on future disposals of oil platforms in the North Sea.

Turning back to policy change in British Columbia, it might be objected that the companies changed positions because of other factors than NGO pressures conducted through the fast track. The answer to this is both yes and no. Yes, because there were other factors such as the Asian financial crisis, changes in senior staff at MacMillan Bloedel, and the increase in logging costs because of the Forest Practices Code and these clearly also had an effect. No, because the companies said that they were changing because of market pressures, thus confirming the reality of fast track pressures. The fast track does not replace the slow track, but it can provide an additional process for policy change.

The fast track is not just fast because of individual companies making decisions rather than waiting for the lengthy public policy cycle to be completed. A “multiplier effect” is generated by a reduction of the intermediaries who would normally buffer or dilute pressures coming from wood buyers. When B&Q buys timber from MacMillan Bloedel, or a German Magazine publisher buys pulp, they do so through traders and distributors. Thus, while B&Q is directly exposed to pressures from consumers and NGOs it would not normally have direct access to its timber suppliers, or even know their identity. The traders and distributors are not themselves exposed to the same pressures as B&Q, and will have many other clients who have lesser levels of “ecosensitivity”. Both B&Q and the German magazine publishers eventually circumvented this problem by first identifying their suppliers, and second by visiting the most “problematical” ones such as MacMillan Bloedel. The direct contact between the producer and buyer facilitates policy learning on both sides and can be seen as a key component of the fast track. Certification helped B&Q in this dialogue. Since B&Q staff are not experts on forestry, and are not familiar with the situation in British Columbia, if they did not have this to propose, their discussions with MacMillan Bloedel could easily have been unproductive.

The presentation of the fast track above has been largely based on just one example. It could reasonably be argued that this is an insufficient basis for the modification of a framework for policy change. This objection is valid. However, the counter-argument can be made that in each of the three case studies we can find examples of the fast track. In Sweden the whole forest industry was on a fast track led by the companies AssiDomän and Stora. In Indonesia, APHI (the association of forest concession holders) took the initiative to start work on certification after the adoption of ITTO Target 2000. The only difference between these examples and the MacMillan Bloedel one, is that MacMillan Bloedel was less proactive.

It is interesting to consider under what circumstances the fast track is likely to exist and to be effective. Drawing on the three case studies, we can hypothesise that going beyond the boundaries of a policy subsystem to activate a fast track will be possible if the following conditions are met:

1. Significant volumes of products are being exported by a subsystem
2. Actor to an ecosensitive market;
3. The NGO or other actor activating the fast track has a strong presence both in the export market country and the policy subsystem and can co-ordinate the two effectively;
4. Buyers (such as retailers) in the ecosensitive market are sensitive to the NGO concerns and consider them to be legitimate;
5. There is something specific and feasible that the actor can be asked to do to improve the situation (e.g. forest certification); and
6. Other actors in the subsystem (e.g. government) cannot stop the actor from doing what is asked.

The fast track and the public policy process

From a policy perspective, we can see the fast track as an approach in which the proponents of change can use a number of different types of policy instruments. These include symbolic, communication and incentive instruments. The fundamental problem will often be a public policy issue. In British Columbia it was clearcutting in old growth forests and in Sweden it was biodiversity conservation. However, part of the fast track approach is not to present it as such, but rather as the responsibility of an individual company. The company will be selected by critical NGOs on the basis of its size and reputation. This has three advantages from a communications perspective. First, there is a clear corporate “villan”, preferably a big company. Second, other companies have no incentive to express solidarity with the company even if their own practices are identical, lest they also become targets. In other words, the target is isolated. Third, the long and complex process of changing public policy can (at least temporarily) be ignored. This means that NGOs can avoid getting co-opted onto commissions to study the problem that might only produce results in years or decades, if at all. However, in the longer term the public policy process cannot be ignored. Even if the fast track is successful for the biggest companies, there will be many other smaller companies that will be less susceptible to it, and it is unlikely that they can be targeted one-by-one without the media and consumers gradually losing interest in the issue. In addition, there is a limit to how much companies can change their practices without going bankrupt or violating legislation and regulations, if public policy change does not occur. This is particularly important in countries where most of the forests are owned by government. In Canadian provinces a licence from the province to a company constitutes both a right and an obligation to harvest a certain amount of timber in a given time frame. In view of this, without public policy changes the options for companies to act on their own are limited. In this context it is interesting to note that MacMillan Bloedel accompanied their “Forest Project” with a policy paper proposing public policy changes entitled “Proposal for Stumpage and Tenure Reform in BC”. The paper was even labelled as a “white paper”, a term normally reserved for formal government policy proposals. In this case the fast track has contributed to one of the companies involved making public policy proposals, rather than waiting for NGOs, or the government to do this.

Is it only NGOs who can activate the fast track and can they do it as often as they want? Most of the examples in this article involve NGOs, but exceptions include the involvement of APHI (the Indonesian association of forest concession holders) in starting work on forest certification in Indonesia, and the activity of Buyers Groups. In principle, there is no reason why private sector actors cannot use the fast track as well.

If processes for public policy review and change are set in place, NGOs may face a tough choice in deciding whether to join in these or continue with the fast track. The reason for this is that if an NGO agrees to participate in a public policy process it is likely to lose credibility with other domain actors and public opinion if it simultaneously tries to use the fast track. We can draw a parallel here with Kriesi's finding that in countries such as Switzerland where there are many mechanisms for actors to be involved in public policy processes, violent protests and civil disobedience are not seen as credible by the public,

whereas in France, where these mechanisms are weaker or absent, strikes and violent protests are more readily accepted (Kriesi et al. 1992). In British Columbia, Greenpeace was clearly aware of this problem and has generally avoided participating in public policy processes despite insistent efforts by the government. One possible tactic for NGOs is to divide up roles with some NGOs participating in public policy processes and the others using (or threatening to use) the fast track. This would of course, require close co-operation between NGOs which cannot be taken for granted.

It should be noted that the fast track does raise some issues about governance and democratic process, which deserve careful examination. In the worst case it could be seen as international NGOs and transnational companies working together to set policy behind closed doors. On the other hand, if these NGOs are to put public pressure on the companies, their demands must not only be made public, but have some measure of public support. Despite this, NGOs would be well advised to be sensitive to issues of transparency and accountability when they use the fast track.

Theoretical underpinnings for the fast track

Although the fast track concept has been developed inductively from empirical data, there are at least three reference points in the literature on policy analysis which can be used to provide support for it.

The first is “venue shopping”. Various studies have suggested that effective actors will seek the most effective policy domain or venue to promote their ideas or interests. The authors of the “garbage can” model of the policy process referred to “fluid participation”, meaning that actors can alter the resources they devote to particular domains. In the “garbage can” model the policy process is viewed as a mix of:

choices looking for problems, issues and feelings looking for decision situations in which they might be aired, solutions looking for issues to which they might be the answer and decision-makers looking for work (Cohen et al. 1972)

Recent studies of policy making in the European Union suggest that actors are continually seeking the most effective venue for them to promote their ideas, while trying to avoid these ideas being debated in venues which are not favourable to them. One study of NGO activities concluded that:

Much more research is needed but it seems reasonable to hypothesise that organizations such as multi-nationals and interest groups such as Greenpeace, Friends of the Earth (FOE) and Worldwide Fund For Nature (WWF) are probably less constrained in their lobbying strategies and have more flexible preference formation processes than governments, for example. . . it would be rational for all interest groups wishing to influence the European policy process to avoid being locked into any one set of relationships (e.g. with “their” national government) or into any one advocacy coalition or any one policy community or policy network. (Mazey and Richardson 1996:213).

This is consistent with the description of the fast track where an actor or actors in an advocacy coalition uses the fast track outside the policy domain to bring pressure to bear on

another actor or coalition. The only difference is that the authors cited above are talking about different levels of public policy processes and seeking the most favourable one, which is not necessarily the fastest one, although the two are likely to be linked. In the fast track concept we go beyond public policy processes to look at private policy formulation, and it is assumed that this will be faster if the right venue is chosen. It will be noted that these authors also mention multinational companies, suggesting that they might be able to use fast track approaches.

The second reference point is the literature on social movements: A social movement has been defined as collective efforts by people holding a common interest, using non conventional political means beyond the framework of institutional or political systems.

Social movements normally involve at least four elements (Knocke 1990:57):

1. Socially disruptive actions targeted against public authorities and their symbols;
2. Purposeful tactics and strategies rather than emotional outbursts;
3. A high degree of group activity rather than elite leadership; and
4. Social movement organizations that are distinct from the movement's mass base in an aggrieved populace.

The logging blockades in British Columbia in summer 1993 targeting MacMillan Bloedel are a typical example of social movement activity in line with these criteria. The fast track events described above are broadly consistent with the criteria as well with two exceptions: the targets are generally companies rather than public authorities, and while group activities of members are important, the actions are co-ordinated by an elite leadership. Without clear coordination using electronic media, an international fast track approach is unlikely to succeed. If we see the fast track as one of several strategies available to social movements, we can explain Greenpeace's decision to cease logging blockades in British Columbia in 1993 and move to the fast track by the end of 1997, as an example of venue shopping because their position in British Columbia had weakened.

A comprehensive study of social movements in the US from 1800 to 1974 suggests four lessons of relevance to the fast track (Gameson 1990):

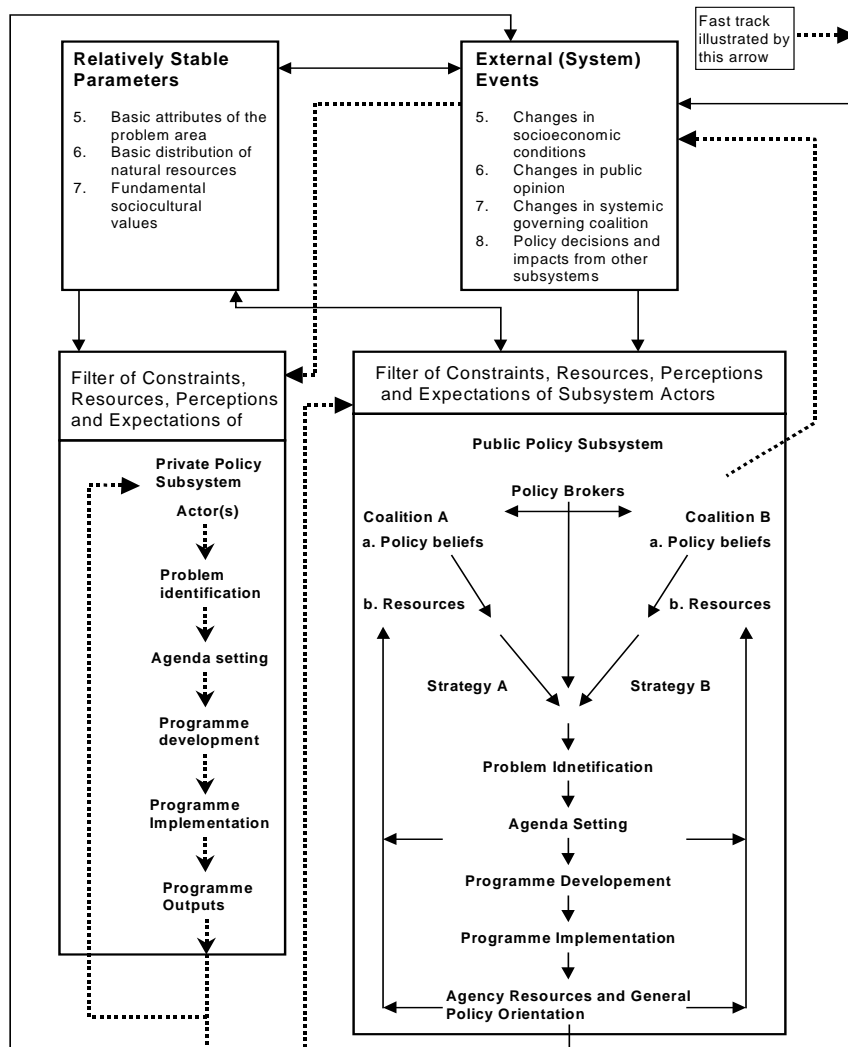
1. Groups that were active and disruptive are more successful than those which are passive when attacked;
2. Effective groups are "combat ready" that is to say they have a centralised organisational infrastructure and adequate staff resources to mount effective campaigns;
3. Socio-economic crises benefit social movements challenging the status quo;
4. The use of modern media, especially television, is the key to effective campaigning.

It should be noted that this study was limited to the US and did not focus specifically on environmental issues. However, it is interesting to note that Greenpeace certainly meets criteria 1, 2 and 4 and the status of forests in British Columbia and other parts of the world has often been described as "crisis" since the mid-1980s.

Third, the literature on policy learning and policy change suggests that rapid policy change (whether incremental or paradigmatic) is often linked to changes in actors in a policy subsystem (Durand and Diehl 1989; Howlett 1998). This change can occur when a new actor

joins the subsystem or an old actor leaves it. The fast track can be seen as a variation of this where an actor is pushed into a process of internal policy change. The individual actor may remain the same, but rather than being a participant in a public policy process, it temporarily shifts venue to focus on an internal policy process.

Figure 2: Revised Diagram of the Advocacy Coalition Framework



5 CONCLUSIONS

To conclude this discussion, a revised diagram of the Advocacy Coalition Framework is presented in figure 2, incorporating the points mentioned above. This is based on the 1993 diagram proposed by Sabatier and Jenkins-Smith reproduced as figure 1, but the following elements have been added:

First, the stages of the “textbook” policy cycle have been added to the policy subsystem which is now called “public policy subsystem”. The addition of the steps was proposed as a useful way of organising information, and proved its value in the case-studies.

Second, a separate “private policy subsystem” has been added. The actor or actors will normally be individual companies. It is assumed that within these companies the same staged policy cycle will occur, but over a period of months rather than decades as in the public policy cycle. Alternatively, there may be several different actors, as in the Swedish FSC working group which is another example of a private policy process. It is possible to have advocacy coalitions in both cases, i.e. within and between these actors. This subsystem is influenced by the relatively stable parameters and external system events just as the public policy one is. However it is also influenced by the fast track. This track normally begins with actors in an Environmental Coalition in the public policy subsystem, who seek to exert market and public opinion pressure on the company, or companies, in question. In ACF terms, this is done by modifying socio-economic conditions or public opinion, both of which are classified as External System Events. These modifications then feed on a fast track through the resources and constraints of subsystem actors. It will be noted that actors, perceptions and expectations have been added to resources and constraints in this box, to take into account the fact that fast track changes are influenced by these. The boxes containing these four elements have been moved into the policy subsystems boxes to function as a “filter”, which is consistent with their role.

The results of changes in the Private Policy Subsystem feed into External System Events and also directly to the Public Policy Subsystem. This latter element is the last stretch of the fast track. It can lead to policy learning within coalitions as other actors in the coalition react to the decisions by the company which was on the fast track. The company may now either return to the coalition or stay on a fast track and modify other policies, depending on the circumstances. Three other changes should be noted. A fast track link for one-off socio-economic shocks, and within the public policy subsystem, two-way arrows between coalitions A and B. This indicates the possibility of policy learning across coalitions without passing through public policy change. Finally, to be consistent with the literature on policy networks it is assumed that relatively stable parameters are outside policy subsystems which are only made up of actors. Thus, the arrows between relatively stable parameters and public policy subsystems are made two-way to cover the possibility of actors in the subsystem affecting, for example the distribution of natural resources by deforestation or burning.

The result is that relatively stable parameters and external system events are both seen as external to the policy subsystem, whereas actors and their resources and constraints are seen as internal.

With these modifications, the ACF becomes a powerful framework for analysing both public and private policy change, and thus governance, particularly on issues where knowledge is uncertain and there is therefore a need for policy learning. The focus on actors, external events and subsystems is maintained but the possibility of rapid private policy change is introduced. The Indonesian case study has shown that the ACF can be used to study public policy change in a developing country. It can now also incorporate private actors at the national and international levels. International actors and changes are introduced in an economical manner by including them in external system events, rather than adding a whole new level to the framework. Making distinctions between actors and events inside or outside policy subsystems, rather than at the national or international level is not only consistent with the original formulation of the ACF. It is also consistent with a globalized world where the distinctions between national and international levels are increasingly blurred.

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PERSPECTIVES ON FOREST CERTIFICATION AS A POLICY PROCESS: REFLECTIONS ON ELLIOTT AND SCHLAEPFER`S USE OF THE ADVOCACY COALITION FRAMEWORK¹

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An array of natural scientific evidence indicates that the planet's environmental health is under increasing and intense stress. As a result, one of the most important tasks facing social science research in the early 21st century is to understand better the processes through which environmentally sensitive policy choices are taken and encouraged. Recognition of this has led a great number of scholars, operating from a wide variety of theoretical approaches, frameworks, and epistemologies, to analyse the policy making process and how policy choices are made. The Advocacy Coalition Framework (ACF) developed by Paul Sabatier and colleagues (Sabatier 1999a; 1999b; Jenkins-Smith and Sabatier 1994; Sabatier and Jenkins-Smith 1993; Sabatier 1993) has been one such approach that has caught the attention of a number of scholars worldwide, and was used in the paper by Elliott and Schlaepfer.

The ACF framework contains a number of specific hypotheses regarding policy change, but its key attraction is arguably because of two conceptualizations it makes. First, it argues that "subsystem" or sectoral level policy making processes can be divided into two or more "advocacy" coalitions attempting to influence policy choices. Each of the coalitions are united by belief systems, further distinguished between difficult to change "core" beliefs and

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more malleable “secondary” belief systems that have more to do with strategies than underlying moral values. This conceptualization has proven attractive to students of environmental policy change because it nicely describes what happens when business dominated resource and other subsectors come under scrutiny from environmental interests.

A second key conceptualization is about the nature of policy change. Sabatier argues that “learning” within the subsystem can occur with respect to secondary beliefs and is thus an important explanation of incremental policy change, but that changes to core values and thus paradigmatic policy change can only be caused by “external perturbations” outside of the policy subsystem. This distinction has proven attractive to scholars because it offers an explanations as to why environmental policy changes seem to be slow and incremental, but while in rare cases, policy change is swift.

The paper presented by Elliott and Schlaepfer is important because it advances the ACF framework in two related ways: it argues that the ACF can be applied to understand better *private* policy making, not just public policy, and that it can be applied to a policy area of less than a decade a more, challenging a core assumption of the ACF. Elliott and Schlaepfer thus modify the ACF framework, identifying a “*fast track*” private policy process to account for rapid policy change in a public policy sector they argue is marked by incremental and slow change. Elliott and Schlaepfer develop their arguments by referring to the cases of forest certification policy development in Indonesia, Sweden, and Canada. While their paper explicitly modifies the ACF, it also permits me to address the question as to whether the ACF is the most appropriate tool for understanding certification politics and policies.

This comment proceeds in three parts. First, I review their argument brief. Second, I address epistemological/theoretical/conceptual issues arising from the paper. Third, I briefly offer my own work with Graeme Auld, Deanna Newsom and Jamie Lawson as perhaps an alternative way to understand the privatization of governance, and the subsequent rules and regulations that ensue.

1 THE ARGUMENT

Elliott and Schlaepfer make two broad arguments: 1) that forest certification policy is different from traditional public policy because it moves much more swiftly and; 2) that an emphasis on policy learning pushes forward an understanding of policy change and durability. They develop their case using a comparative case study approach, looking at two distinct, but related, phenomena that they argue are both examples of private sector “fast track” processes that usurp traditional public policy making processes. The first phenomenon is the example of forest certification, looking at national processes in Canada, Sweden, and Indonesia. They trace certification politics in these countries to show how policy learning either facilitated increased forestry regulations, as in Sweden in Indonesia, or, when policy learning did not occur, as in the case of Canada, no changes occurred. The authors chose to limit their Canadian data to the period from 1993 to 1997, and focus

specifically on the forest industry initiated Canadian Standards Association (CSA) efforts to develop forest certification management standards for Canadian companies.

The second related phenomenon is explored when the authors move from national certification debates to examine an individual forest company in the Canadian province of British Columbia - MacMillan Bloedel (now Weyerhaeuser). The authors argue that MB's adoption of an array of environmental measures through its forest project was another illustration of "fast track" processes influenced by a Canadian environmental forestry "advocacy coalition".

Once exploring these phenomenon, the authors modify the ACF framework by grafting on a "fast track" diagram that bypasses the public policy dimensions of the ACF but retains its focus on "external" and "internal" subsystem perturbations, and the emphasis on learning as a key issue for understanding policy change or stability. As a result the authors argue that the ACF distinction between "actors and events inside or outside policy subsystems, rather than at the national or international level is not only consistent with the original formulation of the ACF. It is also consistent with a globalized world where the distinctions between national and international levels are increasingly blurred". Certainly a key strength of this article is to forcefully argue that a value-based account to policy change serves as a powerful alternative to an interest based account when attempting to explain policy change or stability, and the degree of change that might occur.

The authors conclude that their modified ACF approach "provides a powerful framework for analyzing both public and private policy change, and thus governance, particularly on issues where knowledge is uncertain and there is therefore a need for policy learning". The paper thus performs an important service in reminding scholars that care must be paid to the kind of methodological and theoretical approaches we use. Accordingly, I know turn to detail some questions I have regarding just such choices made by the authors.

2 METHODOLOGICAL/THEORETICAL ISSUES

Measuring "swift" policy change

A key methodological issues arises in this paper over how to measure and conceptualize swift policy change. This is important because the authors forcefully argue that forest policy, in the public policy domain, has been slow to change. Part of the explanation of this slowness, according to the authors, is that "forest policy, as a branch of public policy", has been dominated, by "a limited number of actors in which change is normally measured in decades". The authors explain that, deforestation in the tropics in the 1980s and "subsequent recognition of problems in temperate forest management" resulted in the promotion of private sector forest certification eco-labeling initiatives that bypassed governmental processes, resulting in "fast-track" policy change not witnessed in traditionally closed public policy making processes. The swiftness of certification policy change is then illustrated by examining forest certification dynamics in Canada, Indonesia, and Sweden.

Their argument that public policy change has been slow is an understandable one. In the 1980s and 1990s, environmental activists, frustrated by what they asserted to be a slow pace of forest policy change domestically and internationally (Bernstein and Cashore 1999), focused increasing attention on boycott campaigns that targeted firms directly (Cashore, Vertinsky, and Raizada 2001; Cashore and Vertinsky 1998). And, as Elliott and Schlaepfer note, ENGOs support of certification has given firms a choice of a carrot to supplement the boycott's stick.

At the same time, the authors do not define "slow" or "fast", thus making it difficult to test their key assumption about the nature of public policy change. I suggest the authors look to some of the recent scholarship seeking to measure and define policy change. Just how to measure policy change has consumed the attention of many public policy scholars in recent years, including Peter Hall (Hall 1993) and Paul Sabatier himself. My collaborations with Hoberg, Howlett, Wilson and Rayner (Cashore, Hoberg et al. 2001) resulted in a modification of Hall in which we identified three measures of policy change: policy goals that provide overall direction (such as environmental protection and economic health), policy objectives (such as improving streamside habitat or maintaining corporate profits), policy instruments (the actual way in which goals and objectives are addressed, such as command and compliance regulations or market incentives), and the specific policy settings, such as a change in the speed limit or the size of clear cuts. These distinctions turned out to be extremely important because we found out that in some forest subsectors in British Columbia such as timber pricing, goals objectives and instruments were very resistant to change while settings fluctuated widely; while in other subsectors such as forest practices regulations and protected areas, existing economic health goals were met with environmental protection goals (although clearly inferior). We found that simple descriptions of policy change were difficult to make, but that this more nuanced approach allowed for a broader theoretical understanding of policy change, leading us to theorize that "critical subsectors" that were the most difficult to change ended up constrained policy change in other subsectors (Rayner et al. 2001).

Accordingly, it seems to me that this article could benefit from developing a clear definition of policy change, which might better enable the authors to solidify or reject its argument that forest certification policy is necessarily more swift to change than public policy. Certainly existing research on Canadian and US forest policy reveals that this is at the very least, an overgeneralization of a much more complex process. For example, my research comparing British Columbia and US Pacific Northwest forest policy found that forest policy change governing forest management on US federal forest lands resulted in significant paradigm change, where ecosystem management was embraced, and where harvest levels in the mid 1990s fell to about 10 per cent of their late 1980s levels (Cashore 1997). Indeed, I have been only one of many scholars to note the incredible change that occurred on these forest lands. The work of (Hoberg 1993a and b, 1997; Shannon and Johnson 1994; United States. Department of Agriculture, Committee of Scientists 1999; Yaffee 1994; Johnson 1993; Lippke et al. 1990; Sher and Stahl 1990; Sher 1993; Tuchmann et al. 1996; Thomas et al. 1990; United States, US House Committee on Natural Resources 1994; Hungerford 1994) are just a small example of the vast documentation on this topic which calls into question the

distinction that certification is necessarily a “fast track” compared to public policy. Indeed, it is because policy has moved so swiftly on US national forest lands in the Pacific Northwest that the Sierra Club and other environmental groups, have pushed for a US FSC policy *not* to permit forest certification on any national forest lands, for fear that this might open up logging and *reduce* public policy regulations on these lands (Cashore 1999).

I emphasize the importance of providing a clear definition of incremental and paradigmatic policy change because if there is something more to the “fast/slow” dimension than “private/public”, this raises the question as to whether the fast track metaphor is the most appropriate way to proceed epistemologically and theoretically. Indeed, even the authors’ own evidence is mixed as to whether certification produces swift policy change, since their focus on the Canadian CSA process revealed little learning and little policy change through certification. Certainly research does indicate that certification may in fact hold promise for increasing regulations (Meidinger 2000 and 1997; Cashore, Auld et al. 2001a and b), but this is still a matter for empirical research and hypothesis testing. Interestingly, my own work with research with Auld, Newsom and Lawson has revealed that certification may lead to important policy change in Canada, but at the provincial, not federal level, and in certain provinces such as British Columbia, rather than other regions such as the Maritimes (Lawson and Cashore 2001).

Are there Identifiable National Advocacy Coalitions?

Another key assumption of the paper is that exists identifiable national forest coalitions distinguished by an environmental coalition on the one hand, and a development/industry coalition on the other. I would like to specifically address whether this applies in the Canadian context, an area with which I am most familiar. The assumption that there exists a national environmental forestry advocacy coalition stems from Sabatier himself, who argued that advocacy coalitions necessarily transcend jurisdictions, permeating the political landscape all the while maintaining its structure within the subsystem. I want to take a bold step and argue that there actually is no discernible Canadian environmental advocacy coalition - precisely because jurisdictional and land ownership issues have placed most forestry concerns at the provincial level (with the exception of fisheries and endangered species act considerations (Amos, Harrison and Hoberg 2001)).

Rather, environmental advocacy coalitions do seem to exist, but at the provincial levels - particularly in British Columbia (Lertzman, Wilson and Rayner 1996; Wilson 1998), where new environmental activism has worked to push policy in directions it would not otherwise have taken, and which has rendered British Columbia forest policy quite distinct from other provinces and federal approaches. Indeed, it is ironic that in the province where the most significant public forest policy changes have taken place, British Columbia is now witnessing the strongest interest in forest certification than most other regions in Europe and North America (Cashore, Auld et al. 2001 a and b).

Thus, the environmental forestry coalition in British Columbia certainly is identifiable, and its membership comes from all parts of the globe - but it is focused on territorial boundaries of the province of British Columbia. Even with forest certification, the Forest

Stewardship Council has created a regional standards process that follows exactly the BC territorial lines used for public policy development. Research on other provinces reveals that this BC coalition does not focus much on other provinces, and that the role of environmental groups is quite distinct.

Recognition that there really is not an identifiable Canadian environmental forestry advocacy coalition raises some question about Sabatier's assumption that advocacy coalitions transcends jurisdictional boundaries - certainly their members may come from many areas of the world but international membership should not be confused with evidence that jurisdictions don't still frame policy debates and policy community membership - they clearly do.

Recognition that these coalitions may not be the same across different jurisdictions leads to another important methodological issue: how does one measure an ACF? In the Elliott and Schabfer paper, this issue is side stepped, instead looking at a national industry initiated forest certification program (CSA), and then from there, moving to the individual firm level, exploring the choices made by MacMillan Bloedel (now Weyerhaeuser), following international market boycott campaigns. This raises the third methodological issue I wish to explore

Are firm level policy choices and forest certification both measures of "fast track"?

MacMillan Bloedel's environmental policy changes have also attracted much scholarly attention, particularly regarding the effects of market campaigns on individual firm choices (Cashore and Vertinsky 1998; Cashore, Vertinsky and Raizada 2001; Raizada 1998; Stanbury 2000; Stanbury et al. 1995; Vertinsky 1997; Vertinsky and Zietsma 1998). By including the case of MB in their analysis of "fast track", the authors seems to be broadening their definition to include any choice made in the private sector that was influenced by environmental group initiation. Such a broad definition, it seems to me, ignores what is unique about forest certification - that it promises a new system of governance through which an array of companies and actors will be regulated. This seems quite distinct from individual cases of firms that responds to societal pressures. Indeed, there is a large literature within organization theory that has addressed the way in which firms respond to outside pressures (Jennings and Zandbergen 1995; Oliver 1991; Powell and DiMaggio 1991; DiMaggio and Powell 1991), but these individual firm choices are different from the emergence of new governance systems that could restructure how all of us seek to influence and/or study governance policy choices.

At the very least, if the authors believe that the firm level choices of MB are as illustrative of the certification "fast track" approach as are choices over whether to support a national certification program, then they need to provide more explanation of why this is so.

3 OTHER APPROACHES

Framework/Theoretical Issues

One of the key strengths of the Elliott and Schlaepfer paper is that it provides an important modification to the ACF framework in order to allow it to address private policy making dynamics, which from many accounts appear quite distinct from public policy domain. Instead of rejecting the ACF as not applicable, Elliott and Schlaepfer take the innovative step of modifying the ACF flow chart in which the public policy dynamics can be circumvented through private sector initiatives. The key question for scholarship is whether this modification permits us to understand better the processes through which certification policy is developed, and political struggles that may determine important policy choices. Why has certification developed as an alternative to public policy? Who grants certification programs rule-making authority? Why is it that some forest companies are supporting the prescriptive FSC while other companies are supporting more flexible FSC competitor programs? It is unclear whether the modification to the ACF framework adequately addresses these questions. Indeed, while learning is important, there is not evidence that broad societal learning outside the subsector is occurring, and yet the authors argue it is evidence of large scale forest policy change - something that the ACF says can only happened with social learning outside the sector. The authors argue that application of the ACF revealed that it was “not about strategies of actors”, but rather value - based subsystem account, and events “external” to the subsystem that was the appropriate distinction. Our research indicates that strategies, values, and sectoral level issues all matter - but that they intersect in unique manners in the case of forest certification.

Certification and Legitimacy Approach

My research with Auld, Newsom and Lawson looks at the issue of certification from a slightly different perspective. It argues that certification represents a startling new phenomenon: the emergence of domestic and transnational private governance systems which derive their policy making authority not from the state, but from the manipulation of customer preferences in the market’s supply chain (Cashore 2002; Cashore, Auld et al. 2001a and b; Cashore, Auld and Newsom 2002). From forestry (Forest Stewardship Council 1996) to fisheries (Simpson 2001) to coffee (Fair Trade. org. 2001) and food production, (The Food Alliance 2001), non-governmental organizations have developed governance structures and social and environmentally focused rules concerning the production and sale of products.

This is important, because if the state’s traditional sovereign decision-making authority is not granted (or ceded) by the state to these new systems, then particular care must be placed to understanding how these new systems gain legitimacy, or the authority to make the rules. My forthcoming article in *Governance Journal* outlines four unique characteristics of the Non-state, market driven (NSMD) governance systems: the role of the market (products being regulated are demanded by purchasers further down the supply chain); the role of the state (state does not use its sovereign authority to directly require adherence to rules); the

role of stakeholders and civil society (authority is granted through an internal evaluative process), and enforcement mechanisms (compliance must be verified). In order to understand how these governance systems gain legitimacy, I have turned to a seminal article in organization sociology by Mark Suchman (Suchman 1995) that identifies three distinct forms of legitimacy that may be granted to NSMD governance systems: a short term “pragmatic legitimacy”; a more durable “moral legitimacy”; and a highly durable “cognitive legitimacy” which is granted because it is “understandable” or because to do otherwise is “unthinkable”. These distinctions are important because they reveal that NSMD governance programs in general, and private eco-labeling programs in particular, gain legitimacy from external audiences who are guided by a complex interplay of motivations. The market provides the context within which material and short-term self-interest motivations intersect with moral and cognitive elements - that together determine whether and how different NSMD governance systems gain authority to make rules. A focus on material/profitability incentives alone fails to uncover these more complex legitimization dynamics.

Identification of this heuristic framework also facilitates the development of a nuanced theory of the way consumers within civil society shape the content of eco-labeling/private governance rules, and how this influence intersects with the companies being regulated, companies that purchase the regulated industry’s products, organized environmental groups, and other social organizations. It will also inform those NSMD cases, such as in the forest sector, where there is a competition among different NSMD governance systems over whether eco-labeling rules ought to be strict and difficult to achieve, or flexible and relatively easy to obtain (Elliott 1999).

The framework also permits us to identify within the broad certification trends noted by Meidinger in this conference (Meidinger 2002) a specific NSMD phenomenon that arguably carries with it the most important and profound implications for new forms of governance. As such, it might help address Meidinger’s ambivalence about whether certification programs can be seen, “At least in the near term, ...as strengthening governmental regulation, and possibly even extending the reach of the legal system” versus his argument “If they manage it, forest certification programs are likely to have truly outstripped the nation states’ legal systems”. And when Meidinger addresses the different possible outcomes, he ends up, as I have, to focus on issues of legitimacy and the support given to different programs by external audiences, “For now it appears that the legitimacy of forest certification programs is heavily dependent on the credibility of the groups supporting them”. The question is how this support is granted and the implications of this for the privatization of environmental governance is thus a key question in need of future research. My work with Auld, Newsom and Lawson reveals that how this support emerges, if at all, is important because there is often a competition among competing NSMD governance systems for the right to be considered the legitimate authority (Newsom 2001; Newsom et al. 2001; Lawson and Cashore 2001; Cashore, Auld et al. 2001a and b; Auld 2001; Auld, Cashore and Newsom 2001; Newsom 2000; Cashore 1999).

Our comparative research in the forest sector has revealed that in some regions such as British Columbia, the more prescriptive Forest Stewardship Council program has gained considerable support from forest companies operating in that region while just south of the

border, almost all major forest companies have been steadfast in support of the “FSC competitor” program in the US, the Sustainable Forestry Initiative. Similarly varying degrees of support have been found in the United Kingdom, Germany, and the Canadian Maritimes (Newsom 2001; Auld 2001; Cashore, Auld et al. 2001a and b; Lawson and Cashore 2001). As a result of this research, we have, through inductive approaches, developed seven hypotheses about the way in which FSC and “FSC competitor programs” “legitimacy achievement strategies” are mediated by a region’s place in the global economy, the way in which the public policy process was able to address environmental forestry conflicts, and the structure of the domestic forest sector (Cashore, Auld et al. 2001). As a result, this research has been able to uncover important political struggles in the private sector that we feel Sabatier’s approach, while helpful, fails to adequately uncover.

I would not reject Sabatier’s work completely however, but would work to incorporate some of its important insights that apply to NSMD dynamics. For example, our research to date indicates that NSMD programs have what Sabatier refers to as a “core audience” that shares a set of values that shapes its perceptions of the world. Environmentally and socially concerned organizations tend to make up the FSC core audience, while forest companies and landowners form the core audience of competing NSMD programs. Identification of these conceptions supports research by Sabatier and colleagues (Sabatier and Jenkins-Smith 1993; Mazmanian and Sabatier 1983) in which coalitions (usually between “environmental” and “development”) compete for policy influence. Under Sabatier’s conception, unchangeable “core values” structure and mediate tactics, strategies and public policy dynamics. It seems important to understand how these core audiences limit or influence legitimacy achievement strategies as the programs move to woo over non-core audience members.

4 CONCLUSION

The paper by Elliott and Schlaepfer was important for reminding scholars that special attention must be paid to developing appropriate frameworks and theories, especially with respect to such new trends that forest certification and the privatization of governance introduce. It is for this reason that the papers by myself and Auld, Newsom and Lawson stepped outside political science literature to see what other approaches might shed light on these important issues. By carefully specifying the conditions of NSMD governance, we were able to highlight the important role *evaluations* play in the granting of legitimacy. This, in turn, led us to apply a modified version of Suchman’s legitimacy framework to develop a nuanced classification system of NSMD dynamics, as well as raising important theoretical issues. Certainly this review demonstrates that legitimacy is a key issue with respect to certification governance, a point raised by Meidinger’s review in this conference.

The granting of legitimacy appears to be for quite different reasons, with fundamental implications regarding the durability and malleability of legitimacy status, and what is required by the organization to achieve it. At the same time, more research needs to be done to further develop Suchman’s implicit idea that there is a durability continuum - with

pragmatic legitimacy susceptible to change, moral legitimacy more durable, and cognitive legitimacy the most resilient to change, as it may be that durability is more related to the audience giving it, than an objective status associated with the concept itself.

Indeed, the application of Suchman reveals that the three forms of legitimacy are not mutually exclusive - an organization may attempt to achieve all three at the same or different times. This raises fundamental questions about the interaction between different types of legitimacy in a NSMD governance system. If cognitive legitimacy is indeed the most durable, what is its relationship to other types of legitimacy? Given NSMD market incentives, is pragmatic legitimacy always required before an organization can attempt to achieve moral or cognitive legitimacy? Are legitimacy dynamics affected when there is a competition to achieve rule-making authority? Does maintaining moral support from the core audience act as a constraint on an NSMD governance system's efforts to achieve broader legitimacy, or does such a requirement add to its longer term durability?

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SECTION V

REGULATION

NEW FORMS OF GOVERNANCE: CERTIFICATION REGIMES AS SOCIAL REGULATIONS OF THE GLOBAL MARKET

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INTRODUCTION

In the past decade, a number of new forms of governance have emerged on the world stage, driven in part by the weaknesses and failures of traditional forms of regulation. The new forms include what might be called “social regulation of the market”, in which advocacy groups promoting action on a specific issue partner with the private sector to regulate the behavior of corporations. This partnership typically constructs codes of conduct, systems for monitoring and compliance, standards for public reporting, and increasingly the use of certification regimes to create market incentives for particular kinds of behavior. These systems are designed to work both with and without government involvement. This goes against our traditional views of who governs whom, and how regulatory systems are constructed.

Regulation can be defined loosely as limits imposed on the behavior of particular actors, contained in rules and standards that are not voluntary. Typically, we view regulation as a function of national governments, and the targets of regulation are often the private sector. These two sides, public and private, stand in opposition to each other, especially in the United States. Increasingly, however, the borders between public and private sectors in the regulatory realm have become porous, and those doing the governance now include a variety of actors besides representatives of the state. This has changed our perceptions of what governance is, and how it is accomplished, especially in international affairs.

VARIETIES OF REGULATION

We can classify new forms of regulation in terms of those doing the regulating- the actors in charge of designing, monitoring, and enforcing the rules and standards. We can conceptualize regulatory action in terms of four broad categories: traditional regulation, co-regulation, industry self-regulation, and multi-stakeholder regulation. Traditional regulation is the kind that is developed, promulgated and enforced by national governments, either on their own or in cooperation with other governments. Many people have argued that, in recent years, economic globalization has increasingly undermined such traditional regulatory systems, as governments “race to the bottom” in an effort to attract mobile capital to

their borders. (Greider 1997; Berger and Dore 1996; but see Drezner 2000)

The political debate in many countries has revolved around economic efficiency versus social values in regulatory affairs. During the 1990s, when liberal economic policies dominated political agendas in national capitals and international bureaucracies, many governments across the world liberalized, deregulated, and sought more market-friendly ways to achieve regulatory aims. As a result, what might be termed “co-regulation” has emerged as an increasingly common practice. Co-regulation involves both the government and the private sector in the processes of regulation, with market actors often delegated the task of developing standards and the public sector applying sanctions for non-compliance. The U.S. Environmental Protection Agency, for instance, has experimented with such co-regulation, and the European Union delegates many regulatory tasks to the private sector (Harrison 1999; Egan 2001).

A third form of regulation is industry self-regulation, in which the private sector on its own develops technical standards and best practices. This has been particularly common in the development of standards for technical innovations (Spar 2001). These amount to a form of regulatory action in which firms cooperate among themselves in designing limits on their own behavior, but unlike traditional regulation, the system is based on voluntary standards and voluntary action. While this is not new when it comes to technical product standards, the industry has gone beyond this in recent years to regulate its behavior regarding the social and environmental effects of how they produce and market their goods and services. The 1990s are marked by the number and extent of new “corporate codes of conduct” in which corporations, either on their own or through business groups and trade associations, commit to protecting the environment, upholding high labor standards, and generally acting as good corporate “citizens” (Haufler 2001). These corporate codes can be simple statements of policy, or they can involve more elaborate implementation through internal management systems, auditing and accounting by third parties, and reporting of compliance results. Examples include global guidelines on labor standards developed by Levi Strauss for its sub-contractors, and broader policy statements such as the International Chamber of Commerce principles of sustainable industry. Throughout the 1990s, the adoption of corporate codes exploded from a handful to an almost ubiquitous element of corporate behavior.

Finally, the most unusual variety of regulation is what might be called “multi-stakeholder regulation”. On a number of international policy issues, a variety of different actors from the public, private and non-profit communities have negotiated and developed a regulatory framework. Examples include the World Commission on Dams, the Global Reporting Initiative, and the Forest Stewardship Council. These initiatives typically establish a set of standards and/or goals, a framework for decision-making, and a process for achieving the standards. These programs often include the development of certification systems, which are intended to provide market incentives for compliance. Consumers become the ultimate enforcers of the system, with independent certifiers playing a key role in providing information on corporate behavior. Multi-stakeholder regulation generally encompasses a wide range of forms. It can be something as simple as a corporate code developed by a single-issue advocacy organization and presented to companies for adoption. For example, Amnesty International has developed a corporate code regarding human rights

issues. Or, it may be something more elaborate, such as the Global Reporting Initiative, which is a massive worldwide effort to develop common standards for publicly reporting corporate environmental performance, involving the UN Environment Programme, the International Chamber of Commerce, numerous environmental activist groups, and extensive solicitation of public input. The latter type of effort is also referred to as a “global public policy network” (Reinicke 1998). Multi-stakeholder regulation is differentiated from the other three types by the influential role played by non-profit groups. In fact, they often become the auditors and certifiers of compliance. Social Accountability International (formerly the Council on Economic Priorities) moved from traditional activism, to development of a complete social auditing system which includes training and certification of the auditors.

The latter two kinds of regulation - industry self-regulation and multi-stakeholder regulation-have expanded tremendously in the past decade. Most people refer to these initiatives as corporate social responsibility, business ethics, and corporate citizenship. In referring to them this way, they are dismissing them as regulatory instruments, and emphasizing the voluntary nature of them. Certainly, they are voluntary, but this does not entirely diminish their regulatory function. Certification systems in particular have a kind of soft enforcement through market incentives. At this point, the emergence of new varieties of regulation has created great ferment. For instance, competition is emerging among different certification systems, and some companies are forum-shopping for the most “bang for the buck”, i.e. the least costly certification that will still bring them consumer support. There also is some competition among local, national, and regulatory schemes; this is particularly true in the European Union. Some certification and standards systems overlap, such as the ISO14000, SA8000 and the Forest Stewardship Council, thus making it difficult for any one company to meet the expectations of each.

STRUCTURE, STRATEGY, AND THE EMERGENCE OF NEW FORMS OF GOVERNANCE

Why do we see such a multi-faceted trend emerging across issue areas, industries and countries at this time? Why are industry self-regulation and social regulation becoming more common, as they are? The answer lies in a combination of forces that have changed the structure of both markets and politics, and the strategies of actors operating within those structures.

The structure of markets has changed radically due to the opening of national markets around the world to trade and investment from abroad. Few countries today are completely closed off from world markets. This has led to increasing competition among firms and among countries to access markets, sell products, and attract investment. Corporations have extended themselves globally in new ways. Some firms have become more transnational, with one central hierarchy and strategic planning that spans the globe. Many firms have become linked through networks of joint ventures, strategic partnerships, and sub-contractor relationships. Today there are over 60,000 multinational corporations with literally hundreds

of thousands of subsidiaries located around the world. (UNCTAD, 2001) This means that managers confront on a daily basis the difficulties of operating in multiple jurisdictions with very different cultures and political systems.

The structure of the world political system can be characterized by the relative failure of traditional inter-governmental institutions, and the success of transnational organizing by non-profit actors and activists. The failures of traditional regulation at the international level can be traced back decades, to the failure of the International Trade Organization proposed after WWII. The initial proposals for an ITO included rules for an emerging and troubling phenomenon - the development of the multinational corporation (MNC). In the 1970s, many developing country representatives expressed concern about the power these MNCs could wield in their weakly developed markets. In response, the United Nations established a Center on Transnational Corporations and launched international negotiations to establish a Code of Conduct for Transnational Corporations. These negotiations dragged on for over a decade and ultimately failed. This was due in part to the liberal consensus that emerged in the 1980s, even in the developing countries that formerly had been so critical of foreign investors. Although both the Organization for Economic Cooperation and Development and the International Labour Organization have developed voluntary codes of conduct for MNCs, most observers agree that corporations are not sufficiently regulated at the international level. Many fear the result is that companies will compete for the cheapest location for production, leading countries to a race to the bottom as they compete to lower their regulatory standards.¹ It appears to many that the development of an integrated global market has outstripped the governance capacity of the current international system.

In response to these changes, prominent actors have changed their strategies. Activists in particular increasingly organize coalitions that transcend national boundaries, bringing together interested parties across the globe. Starting in the 1970s but becoming more prominent in the 1990s, transnational activist groups have launched high profile campaigns against MNCs, accusing them of environmental destruction, complicity with government human rights abuses, and exploitation of workers in developing countries. This “corporate accountability movement”, if it can be called that, seeks to change the policy of companies on key issues, often because the activists have been unable to change the policies of national governments on those issues.² They utilize sophisticated media campaigns and make increasingly effective use of the Internet. They mobilize consumer sentiment through calls for boycotts, and mobilize investors through shareholder resolutions and socially responsible investment funds. They initiate lawsuits in whatever court will take a case, in recent years using the U.S. Alien Tort Claims Act to attack behavior in foreign countries. At the extreme, they promote direct action against corporate facilities. This targeting of corporations today is combined with a more widespread anti-globalization movement which expresses popular

¹ For the view that corporations are running wild, see (Greider 1997; Korten 1995). For an opposing view, see (Drezner 2000).

² Robin Broad and John Cavanagh originally labeled this a corporate accountability movement, while noting that it was still somewhat incoherent and loosely knit together. See (Broad and Cavanagh 1998).

doubts about the value of integrated markets and corporate power, generating protests at every international economic meeting from Seattle to Genoa and beyond.³

While the most visible portion of the activist community is clearly anti-corporate, there also exists a more moderate set of organizations. In a significant change of strategy, a number of prominent non-governmental organizations have been willing to engage in dialogue with the private sector. Such international advocacy groups as the World Wildlife Fund for environmental issues and Amnesty International for human rights have, in certain circumstances, been willing to work directly with companies to address specific problems. They have been willing to work in partnership with the private sector (within limits) to develop voluntary regulatory mechanisms.

Strategies have also changed among major business players. Despite the fact that the sweeping liberalizing reforms of the past decade have made it look as if they are always winning, a significant number of corporate managers are becoming increasingly sensitive to the bottom-line effects of criticism and activism. They are getting worried about the political backlash against globalization, and the increasing effectiveness of global campaigns launched by transnational advocacy groups. While economic competition heightens the need to produce goods and services at the lowest cost possible, there is a conflicting pressure to raise standards in order to capture the quality end of the market. The backlash they foresee potentially could lead to a return to stricter forms of government regulation and intervention in markets. Leaders of international corporations or companies that serve an international market are also concerned about their reputation, which is a corporate asset that is easy to lose and hard to gain.

Corporate executives and activist leaders are in a contest today to see which one can more effectively manipulate and leverage corporate reputation for their own ends. One way for business leaders to respond is to take the lead in developing alternative forms of regulation to meet social expectations expressed loudly and effectively by the activist community. This means they must participate in dialogue with their critics, develop internal policies that push standards higher, and develop new partnerships to resolve policy dilemmas. To date, a handful of business leaders are learning about the risks and opportunities presented by a strategy of industry self-regulation and multi-stakeholder regulation as a response to conflicting pressures.

FORESTRY AND NEW FORMS OF GLOBAL GOVERNANCE

There has been an international debate over the issue of sustainable forestry for well over a decade now. Sustainable forestry appeared to reach the top of the international agenda in 1992 at the United Nations Conference on the Environment and Development (the Rio Conference), during contentious negotiations over forestry management issues. At Rio, however, the participating states failed to reach agreement, and settled for a non-binding statement of principles, the Forest Principles. They had failed to establish a traditional

³ The literature on transnational social movements has been expanding rapidly in the past decade. See, for example, (Keck and Sikkink 1998; Wapner 1996; McAdam et al. 2001).

international regulatory framework, and it was clear to many observers that national regulatory systems were weak or non-existent in many of the countries most affected by deforestation. Many segments of the logging and paper products industries had become global, yet they were not globally regulated. Activists, finding themselves blocked at the national and intergovernmental levels, pushed to develop alternative mechanisms. The Forest Stewardship Council, the Sustainable Forestry Initiative, and other efforts were created as forms of multi-stakeholder regulation and industry self-regulation designed in part to supplement weak international law.

These new forms of global governance raise important questions about how the global political economy can be governed, and by whom. Political scientists and policy analysts have begun to develop a new agenda focusing on the relationships among globalization, global governance and non-state actors. Rosenau and Czempiel were two of the first to give sustained thought to the concept of governance without government, but struggled to identify and define the basic concept (Rosenau and Czempiel 1992). Stephen Kobrin refers to the “new medievalism”, in which governance functions are located at multiple, overlapping sites involving local, national, regional and international institutions and both public and private actors. This points up the idea that authoritative decision-making can come from different “places” simultaneously, but without clearly defining the conditions under which specific decisions will be taken at a specific level and by a particular set of actors (Kobrin 1998). Prakash and Hart look at the links between globalization and governance from the perspective of political economy, and their work pays attention to variation across industries in the degree of globalization and the character of governance (Prakash and Hart 1999). Kahler and Lake describe governance as the manner in which groups manage their common affairs, entailing an authority relation between those who govern and those subject to governance (Kahler and Lake 2003). These all point up different important elements of the evolution of governance, - but raise more questions than they answer. They reflect the unsettled nature of current thinking about global governance.

The alternative regulatory initiatives covering forestry issues certainly take account of sectoral variation, by focusing on the forestry and paper products industries. The Forest Stewardship Council Initiative involved representatives of industry, indigenous groups, environmentalists, and others, while the Sustainable Forestry Initiative was launched by industry itself. The existence of these and other alternative regulatory systems alongside continuing international negotiations under the auspices of the United Nations certainly reflects a certain “medievalism” in the multiple sites of decision-making and multiple actors involved. The participants design, construct and maintain a variety of mechanisms to reach decisions concerning sustainable forestry. However, the enforcement is often by non-participants (major buyers, consumers and investors) rather than the decision-makers themselves. Often, the different pieces are governed by different actors-the design of the rules is accomplished by a multi-stakeholder group, the maintenance is by a special-purpose organization, the monitoring is by still other specialized groups, and the enforcement is by yet another set of actors.

These all raise a series of issues that have yet to be resolved. The first is the issue of how is a problem area defined for decision-making purposes? Problem definition often

determines which collective group is brought together, but it is not yet clear that the decision-makers in these cases are the most appropriate representatives of “public” interests. Forestry issues have been defined as global ones, although most people experience it as a very local phenomenon. By turning it into a global issue, international environmental groups have tried to establish their legitimate right to protest local decisions about forest resources. On the other hand, many of the forestry activists are in fact locally-based, which gives the forestry initiatives much more legitimacy than they would otherwise have. In the case of industry initiatives, the issue of representativeness is particularly acute. Industry self-regulation, while a step in the right direction, often is designed with more attention to private interests than to public ones.

All alternative forms of regulation suffer from the problem of lack of accountability. In accountable systems, those who make decisions that the public deems to be wrong can be re-called, denied re-election or re-appointment, or otherwise held responsible. Both multi-stakeholder regulation and industry self-regulation are unaccountable. The participants are self-selected. The ill-defined “public” in these cases can hold people accountable only through indirect means, by their choices in the market place. They also can hold them more directly accountable through litigation in some cases.

One issue that has been raised in some circles is the impact of these alternative forms of regulation on the power and capacity of traditional regulators - the governments and international organizations that are commonly thought of as being in charge. Most of the new voluntary initiatives have been developed by activists and industry representatives based primarily in Western industrialized countries. Some critics have argued that codes of conduct, certification and labeling systems can be used as a disguised form of protectionism. Thus, wood products from certain countries may be informally barred from markets if they do not meet stiff standards of sustainability. The existence of these non-governmental mechanisms may undermine the capacity of developing country governments to develop and implement their own regulatory infrastructure. At this point in time, however, most of the forests being certified are located in the industrialized countries, so this has not yet become a pressing issue. Experience in other sectors, such as apparel and textiles, indicates that it may become a more prominent issue in future.

There is some indication that there will be increasing competition among different certification and monitoring systems, weeding them out and perhaps producing a widely accepted and legitimate global system - or lead to the least common denominator standards winning out. Governments may step back into the picture more strongly, and support certification programs through government policies, perhaps even moving into the realm of co-regulation. The line between delegation and usurpation of power and authority by non-state actors may be a thin and controversial one. On the other hand, governments may be too weak, uninterested, or politically divided to act, in which case, alternative forms of regulation may be the most effective means to achieve popular goals regarding sustainable forestry.

THE PROSPECTS FOR NEW FORMS OF GOVERNANCE

What will happen to the non-traditional forms of regulation discussed here in the future? Are they a permanent feature of modern governance, especially at the global level? Or are they an artifact of a particular confluence of trends at the turn of the century? Much depends on the will and commitment of governments, the continuing ingenuity and expanding influence of non-governmental actors, and the continuing internationalization of industry.

States will remain the most significant actors in world politics, but their influence will vary tremendously across issue areas. The balance between public and private action in economic affairs, however, is likely to vary over time. Historically, during periods of innovation and change, the private sector has pushed the boundaries of existing rules and developed new rules and standards of their own (Spar 2001; Cutler et al. 1999). As change slows down, technologies become more stable, and organizational innovations become more widely accepted, it is likely that public authorities will establish a regulatory framework. At the international level, however, the kind of cooperation needed for this is still difficult to achieve. States have different levels of development and technological sophistication, which means that not all will gain the same benefits from such a regulatory system. This is complicated further by the fact that governments have different degrees of regulatory capacity in their domestic affairs.

Non-governmental organizations of all stripes will continue to exert influence in international affairs for the foreseeable future. They have built transnational coalitions whose agendas are merging and becoming better focused, and thus potentially even more effective. The partnerships they have created with the private sector, international organizations, and governments have been hailed as the most appropriate and democratic means to overcome the differences among those affected by economic change (Reinicke 1998). Global civil society may even be strengthened and energized by current challenges, including economic stress and terrorist threat. In some cases, the participation of these groups in decision-making processes has become part of the infrastructure in such institutions as the United Nations and the World Bank, and this is unlikely to change. However recent successes may be undermined by the indeterminate nature of the benefits of these partnerships. In many cases, the dialogue that is the bedrock of multi-stakeholder partnerships may be the most important benefit of these relationships, and yet these benefits are difficult to measure. Some observers argue that the voluntary regulation that is emerging today only addresses the "low hanging fruit", i.e. the easiest and least costly changes to behavior. Pressure from activists and constructive engagement by the non-profit and for-profit sectors may be the most effective way to deal with global issues at this point in time. Ultimately, however, many of the most difficult social issues will need to be dealt with at the local or national levels by effective government authorities and democratic political processes.

The private sector shows no signs of slowing down in its drive to become truly transnational. Many companies from the developing world are now the ones that are becoming transnational at the fastest pace (UNCTAD 1998). Smaller firms will continue to have opportunities to reach global markets through networks of suppliers and buyers, and increasingly through the Internet. Will a deep economic recession turn back the clock on

globalization, or undercut the commitment of the private sector to social partnerships? Will the war on terrorism be likely to disrupt international economic networks and erode the willingness of executives to promote corporate social responsibility? Will current corporate scandals undermine public confidence in the private sector and strengthen pressure on companies to demonstrate ethical behavior? Current events point in contradictory directions. During an economic downturn it will become more important than ever to seek out low cost production methods. This means that international sourcing of products and transnationalization of the corporation itself will continue. Industry self-regulation that provides solid bottom-line benefits will continue to have value, although there will be competition among different standards, given that different groups of firms benefit from different standards. When it comes to social issues and not technical standards, perhaps a “race to the bottom” was unlikely during an economic boom, but it becomes more probable when economic stresses intensify. At the same time, industry will be under pressure to demonstrate that it can be trusted, that it is part of the solution and not part of the problem. Some have already invested sufficient time, energy, and money into new standards and social partnerships that it will be difficult and costly to turn back.

The ultimate value of multi-stakeholder regulation and industry self-regulation must be assessed in both absolute and relative terms. From an outcomes-oriented perspective, industry self-regulation and multi-stakeholder regulation must demonstrate over time that they are effective in reaching their objectives. We are still at a fairly early stage in the development of initiatives such as the Forest Stewardship Council and the Sustainable Forestry Initiative. Over the course of, say, ten years they need to demonstrate that they are effective at slowing deforestation and, increasing the number of acres of sustainably managed forest.⁴

These bottom-line considerations are the most vital measures of success, and yet we cannot assess these new regulatory initiatives without looking at the viable alternatives. The main alternative is of course traditional, top-down regulation by governments. But we already know that governments are often barred from effective cooperation in creating an international regulatory framework by profound conflicts of interest. We also know that even traditional regulation at the local level is not completely effective, as numerous corporate scandals attest. For the foreseeable future, various forms of international regulation will co-exist, and global governance will be best described by Kobrin’s “new medievalism” metaphor. This may be more than just a second-best solution, however. Perhaps the unstable balance between universalistic forces borne by global civil society, versus the localized understanding of what is valued by particular peoples, is best managed by such flexible and multi-tiered regimes.

⁴ See other contributions to this volume for discussions of how to measure the success of these initiatives.

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THE FOREST STEWARDSHIP COUNCIL AS A NEW PARA-REGULATORY SOCIAL FORM

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*“How Home Depot and Activists Joined to Cut Logging Abuse:
If a Tree Falls in the Forest, The Small, Powerful FSC Wants to Have Its Say.”*
Front page headline of Wall Street Journal; September 20th, 2000.

THE PROMISE AND PROBLEM OF THE FOREST STEWARDSHIP COUNCIL AS A FRONTRUNNER OF THIRD PARTY CERTIFICATION PROGRAMS

During the 1990s, non-governmental attempts to introduce new certification and labeling programs to promote sustainable development stood at the center of broader efforts to use market instruments to improve environmental and social well-being in global commodity production. These programs, which sought to capitalize on the increasing purchasing power of the “green” consumer to reward companies whose practices accorded with NGO-defined environmental and social criteria, appeared in a range of industries, including forest products, textiles, footwear, rugs, and children’s toys (see, e.g., Coop-America 1999, 2000, 2001; Kruijtbosch 1997; Lynch 1997; Nash and Ehrenfe 1996; Rothstein 1996). At a time when most existing multilateral efforts to address labor and environmental abuses in global commodity trade were widely seen as ineffective, and when market based alternatives to command-and-control regulation were in vogue, government and business leaders welcomed voluntary “eco-labeling” and other certification programs as welcome tools to foster sustainability (OECD 1997; Salzman 1991; Adams 1990). Recognizing that activist NGOs, consumers, and governments were widely suspicious of unenforceable industry-sponsored codes of conduct that often smacked of “green-washing,” leaders of high-profile firms became far more willing to consider more legitimating, NGO-enforced, alternatives (Wasik 1996; Nash and Ehrenfe 1996; Murphy and Bendell 1997; Knight 1995; Economist 1999). At the same time, a number of environmental and social justice NGOs, conceding that traditional boycott campaigns were often ineffective and also alienated potential allies, joined the bandwagon in earnest (e.g., Friends of the Earth 1996). By the mid-1990s, a variety of new partnerships to “make markets work” for social and environmental well-being had emerged.

Chris Elliott, Errol Meidinger and Gerhard Oesten (eds.)
Social and Political Dimensions of Forest Certification, 2002

Among these new partnerships, the Forest Stewardship Council has grown to become the case *par excellence* of their potential. The FSC, founded in 1993 by a coalition of environmental and social justice NGOs, retailers, and a smaller number wood producers, quickly evolved to capture the imagination and attention of a variety of observers concerned about deforestation, species loss, and the destruction of forest-based economies and communities (e.g., Murphy 1996; Hansen 1997; Bryce 1994). Founded as a consensus-based, multi-stakeholder, international body with representatives from both the North and South, the FSC sought to formulate common principles and criteria that would define minimum environmental, social, and economic standards to be met in the production setting (FSC 1995, 1995a, 1996). National and regional FSC “working groups” would consult with local stakeholders to adapt these principles and criteria to different socio-economic and biophysical environments. Firms that voluntarily underwent inspections by accredited third-party certifiers of the FSC and met these regionally-adapted criteria would be certified as “well-managed” by the FSC and could apply a label on their products.

In attempting to undertake such an ambitious project, the FSC was charting new waters: it sought to harness the power of the marketplace to provide voluntary incentives for firms to “do the right thing;” it articulated universal criteria to define good management while attempting to be responsive to local variation; it struggled to balance often-competing social and economic as well as environmental dimensions of sustainability in practice; and it committed itself (at least on paper) to consensus based, cross-stakeholder cooperation among interests in both the North and South. Given these seemingly utopian goals, it is easy to see why some early critics dismissed the effort as a well-intentioned but misguided experiment (for an especially critical assessment, see Kiekens 1997; see, also, Varangis et al. 1995).

Almost ten years after its founding, the FSC in many respects has proved the critics wrong. As of fall of 2001, the program counted among its members over 415 individuals and organizations from a broad spectrum of interests in the North and South, had established national working groups in 45 countries, and had certified over 30 million hectares of productive forests in Europe and North America, and, to a lesser extent, Africa, South America, and Asia (WWF-UK, FSC International sources). Governments, leading retailers, a broad spectrum of NGOs, and even some timber companies have celebrated the FSC as a leading exemplar of what new business-NGO partnerships can make possible in the global marketplace (e.g., Jenkins and Smith 1999).

But underneath this simple story of apparent success lie a number of contradictions and enigmas. Most conspicuously, the success the FSC has seen in meeting its stated objectives - increasing the share of production and consumption covered under its protocols - has varied wildly across different domestic markets over time. In some countries, such as Britain and Sweden, the FSC saw fantastic support and growth at the domestic level by the late 1990s, whereas in other major producer and consumer nations, such as the United States and many tropical countries, its early growth was slow and contested. Cross-national variation speaks to a second, more phenomenological complexity: the FSC did not simply appear ready-made in the marketplace to cater to “green” consumers; rather, from the beginning, the organization seemed to be involved in strategic efforts around the world

to enlist the support of allies, formulate and build a complex organizational structure, manage perceptions of public opinion, and build supply and demand for its services. In fact, as the FSC has evolved, industry-led coalitions have sought to undermine its legitimacy in a number of countries, government and firm-sponsored certification schemes have sprung up as alternatives, and threats of adjudication by state and multilateral watchdogs of the marketplace - such as the WTO - have been made. Even in those markets where the FSC has gained a strong foothold, broader conflicts over the legitimacy of the FSC and the way it operates continue unabated (e.g., Britain).

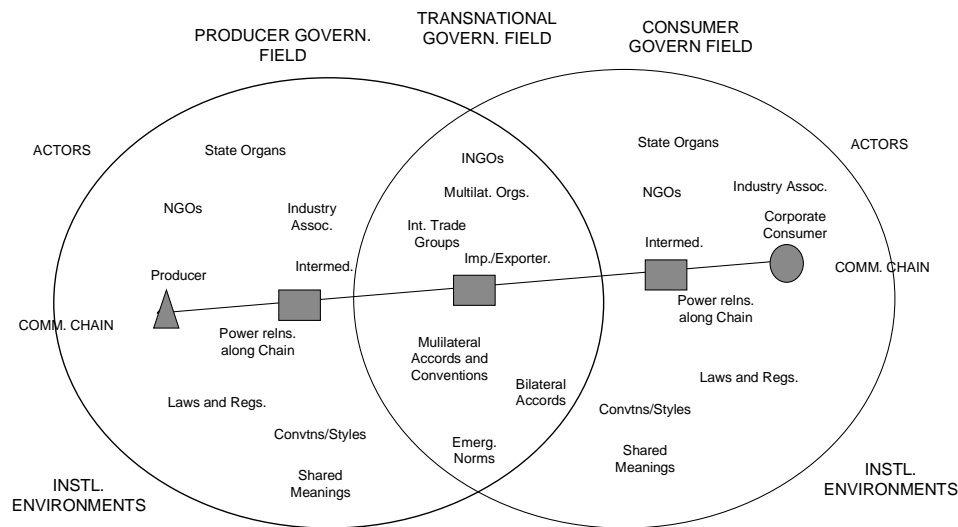
It should come as no surprise, then, that current opinions on the viability and desirability of the FSC as a poster-child for new market-based oversight programs are anything but consistent. Scholars and policy observers have yet to fully agree on what the FSC in practice actually is, what it has actually done to contribute to improved social and environmental well-being, and whether it can, or should, survive in the global marketplace. Sympathetic NGOs such as WWF International continue to champion the FSC as the only currently viable third party certification program seeking to improve production practices in a sector that is woefully under-regulated. Theorists and policy-makers leery of devolving state regulatory responsibility to other actors in the marketplace worry that support of the FSC is misguided (e.g., Lipschutz 2001), while some developing country advocates and industry observers accuse the organization of becoming a *de facto* monopolist creating barriers to trade (e.g., some advocates for the Pan European Forest Certification alternative). As a poster child of a new family of “win win” partnerships to foster sustainability in the global economy, the experience thus far of the FSC appears to raise more questions than answers.

THE PROJECT

What is the informed sociological observer to make of this apparently complex and contradictory story? What can the FSC’s experience thus far tell us about the nature, potentials, and limitations of the organization as a frontrunner of international NGO-sponsored oversight programs? Existing research on the FSC has largely focused on appraisals and analysis of its effectiveness in specific production settings (e.g., Markopolus in this volume), debates over the significance of “consumer-driven” market instruments to promote sustainability (e.g., Hansen 1997), and the potential benefits of NGO-firm cooperation (e.g., Murphy and Bendell 1997). Such research has been invaluable, but economic, public policy, and industry-centered approaches more generally have a difficult time describing the program’s evolution phenomenologically, explaining why it has evolved so distinctly in different domestic markets, and assessing the consequences of its concomitant entanglement in a number of broader regulatory conflicts in domestic and international arenas. Because of this, the sociological nature, patterns of institutionalization, and significance of the FSC to broader concerns over social and environmental justice in global commodities trade remain largely unexplored.¹

¹ Several contributors to this volume have begun to redress this lacuna in their own work.

Figure 1: A simplified schematic of Governance Fields Surrounding a Multi-National Commodity Chain



This paper summarizes the findings of a larger project² that attempts to provide systematic theoretical and empirical insight into the nature and implications of third party certification programs by adopting a hybrid sociological institutional approach to analyze the multi-national evolution of the Forest Stewardship Council as a crucial case. The investigation posits a strong claim: C&L programs such as the FSC evolve phenomenologically **not** as efforts to meet the needs of the green consumer, but as domestic-transnational networks of institutional entrepreneurs that have sought to introduce new norms and conceptions of control in the governance fields surrounding the commodity chains they address in countries around the world. Thus, the success programs such as the FSC may achieve in influencing production practices depends on the degree to which they can successfully institutionalize their protocols as legitimate, stable, and robust new para-regulatory forms. The extent to which they succeed in domestic markets around the world, the sociological model predicts, is conditioned by three dimensions of national institutional environments: relations of power and initial self-interest among actors along the commodity chain, prevailing regulatory styles and conventions of governance, and dominant shared cultural frames. Figure 1 provides a simplified overview of the synthetic model of governance fields drawn from sociological institutionalism that informs the project.

² McNichol, Jason 2002: *Contesting Governance in the Global Marketplace: A Sociological Assessment of NGO-Business Partnerships to Build Markets for Certified Wood Products*. Ph.D. Dissertation. Department of Sociology: University of California at Berkeley.

Guided by this synthetic model, I set out to engage in an embedded comparative analysis of the FSC's genesis, evolution, and outcomes around the world between 1990 and 2001. Drawing upon evidence collected in North America and Europe from primary interviews (n= 34), private correspondence between major actors and other archival sources public and specialty press coverage, participant observation, ethnography, and quantitative trade and survey data,³ I first undertake a social history of the FSC within the broader politics of governance in the production and trade of forest products that shepherded its arrival. I then focus the analysis by engaging in a comparative history of its differential trajectory in two high-profile domestic markets over time - Britain and the United States - which together served as "ground zero" for the birth of the FSC's institution-building efforts. By combining these findings with additional data from other countries, I draw on methods of comparative logic and counterfactuals to arrive at a set of tentative conclusions.

MAJOR FINDINGS

A New Social Form on the Regulatory Stage: The FSC as an Articulated Para-Regulatory Advocacy Coalition

In practice, the FSC did not develop as an effort to meet consumer demand for guilt-free wood; rather, its advocates actively and strategically mobilized powerful retailers and selected suppliers, leveraged the shaming power of more radical watchdog groups to attract new participants, drew upon the material and institutional resources of sympathetic philanthropies and states, and engaged in a careful political-cultural process of legitimation to construct supply and demand along the commodity chain. Thus, from the very beginning, the individuals and organizations that formed the FSC began a process of strategic legitimation and institutionalization in an effort to forge a new constituency for their program. At the center of this effort stood a coordinated network of entrepreneurial individuals in Europe and North America who sought to use the purchasing power of high-visibility retailers and corporate consumers to pressure suppliers to seek FSC certification. At the same time, they sought to build supply by lobbying regional governments to support pilot projects on state lands, encouraging sympathetic landowners to become early adopters, and engaging in a "good cop, bad cop" relationship with more radical NGOs who continued to press forward with shaming campaigns and boycotts attesting to the poor production practices of well-known, uncertified forestry companies. All the while, the coalition behind the FSC continued to marshal the symbolic and material resources of respected philanthropies, existing regulatory authorities, and intergovernmental agencies for support and legitimation.

In sum, the FSC operated as an *articulated para-regulatory advocacy coalition* seeking to institutionalize new norms and rules into the oversight of forestry practices around the world. The FSC was *articulated* as an organization that sought to link regional/national

³ Because of space limitations, a full listing of sources and methodological techniques employed for the larger project is not included here. They are available from the author upon request.

initiatives within a transnational governance structure; it functioned as a *para-regulatory* body that attempted to define and enforce new governance rules alongside but outside of traditional state regulatory structures; and it was constituted by a *coalition* of NGOs and firms that shared common normative convictions as *advocates* for a new form of governance.

But such an institutionalization project proved extraordinarily difficult for the FSC, both internally and externally. As a multi-national organization seeking to define an array of standards and accredit certifiers through “multi-stakeholder consensus” in different regions under a common framework, in the years after its founding the FSC grappled with a number of internal problems: tensions between local groups and the international secretariat, institutional paralysis when constituencies could not reach consensus, disagreements over market strategy and alliances, funding deficits, and several other institution-building obstacles. But internal struggles were only the beginning.

As institutionalization of the FSC took hold around the world, broader conflicts unfolded in domestic wood markets as the coalition threatened existing rules and relations of power. In a number of domestic markets, the FSC sought to capitalize on a perceived lack of legitimacy in the governance field to develop a new locus of control and set of formal and informal rules in the markets within which it operated. Over time, these latent functions became more evident, and other stakeholders quickly mobilized to protect their self-interest and maintain their power within the regulatory arena. Conflicts over the legitimacy of the FSC and its power to influence broader regulatory norms and rules ensued. To the degree that the FSC was successful in making inroads into specific markets, dominant firms, other NGOs, and states were drawn into a more generalized conflict over what should be regulated, how regulation should be undertaken, and who should do it. How such conflicts unfolded over time to affect the fate of the FSC in countries around the world appears to be largely explained by domestic factors. Britain and the United States provide a revealing comparison.

Explaining Success And Failure At The Domestic Level: Heterogeneity in Pre-Conditions, Entrepreneurial Strategy, and State Legitimation

Britain: An ideal-typical case of success and uncertainty

For most observers of the potentials of new “partnerships” supporting third party certification, the history of the FSC in Britain was, until very recently, celebrated as the ideal-typical success-story (see, for instance Murphy and Bendell 1997). Indeed, the history of the FSC effort in Britain is one marked by a series of impressive early successes. Nonetheless, it continues to be overshadowed by ongoing struggles over its future.

In the early 1990s, leading retailers joined with a dominant national ENGO to build a “buyers group” committed to sourcing its wood exclusively from third party certified “well-managed” forestry operations by 2000.⁴ Formalizing their commitment under the FSC

⁴ The original group had in 1990 committed to sourcing only from FSC-certified suppliers by 1995, but it changed its target to the year 2000 as 1995 approached. More recently, the group has once again shifted its objective to 75% certified sourcing by 2005 (WWF-UK 2000).

umbrella, the buyers group had by 1996 enlisted the participation of 47 companies, representing about 22% of domestic wood consumption (WWF-UK sources). Meanwhile, on the supply side a motivated FSC regional standards “working group” began canvassing participation by private and state interests to formulate regional FSC standards for British forestry operations. However, as the FSC coalition garnered growing sympathetic media attention and support from powerful importers and some state organs, a majority of domestic producer interests reacted in earnest, launching their own alternative labeling program and attacking the legitimacy of the FSC in the media and through complaints to government bodies. A public relations battle for legitimacy and allegiances between the two groups ensued, and many observers reckoned that the FSC and the third party oversight principles it stood for were doomed.

But just when the battle was at its ugliest, the Forestry Commission stepped in to broker a compromise by seeking to develop a government-sponsored “Woodland Assurance Scheme” (UKWAS) that would be acceptable to both groups. In a series of meetings and rounds of drafts with the full gamut of unhappy interests, the Forestry Commission succeeded in introducing a new state-sponsored scheme in 1999 that, while nominally not beholden to the FSC or any other NGO, pleased the FSC sufficiently to allow the organization to recognize the UKWAS standards as equivalent. The compromise was seen as a resounding success for the FSC and the rules and norms it stood for. But the underlying struggle over the balance of power between ENGO and industrial interests was not over; by early 2000 a number of domestic producers had found renewed strength to oppose the FSC by allying themselves with another rival industry-controlled scheme operating in Continental Europe.

By triangulating evidence from multiple sources, I set out to explain both the exceptional success and the continuing struggles over the FSC’s future in Britain. The early, robust growth of the buyers group owed itself to four major factors: (1) the relative power and leverage garnered by a closely coordinated network of leading retailers, supported by the dominant ENGO, to pressure suppliers in tandem; (2) the success the buyers group had seen in encouraging major foreign suppliers of wood to get certified with the implication that smaller, domestic landowners could be locked out of the market; (3) the highly competent and skilled ability of FSC supporters to build a broad coalition by re-framing their cause to resonate with prevailing cultural frames and understandings of self-interest among core constituencies; (4) the passive, but significant, legitimation of the FSC’s efforts accorded to it by the British and EU governments; and (5) a carefully choreographed “good cop, bad cop” coordination strategy between the moderate FSC-WWF UK coalition and more radical NGOs (especially Friends of the Earth) in their public campaigns.

As this coalition began to succeed, however, a number of domestic woodland owners correctly surmised that the FSC’s mission would shift the balance of power away from existing, less demanding and costly state oversight, and also reduce the amount of leverage they possessed through their close relationships with the Forestry Commission (the state regulatory body). While the subsequent anti-FSC backlash gained considerable momentum and sympathy from the state through 1997, two major factors helped lead to a major shift in state strategy and the successful development of a compromise. First, as both a primary

owner of productive woodlands in the UK (through Forest Enterprise) and a champion of the UK's competitive interests and international reputation, the Forestry Commission was highly motivated to find a solution that enabled the domestic wood industry to strengthen its market share. Second, the new Forestry Commission representative, stepping out of his state role to serve as a "neutral" mediator, showed particular talent and skill in keeping opposing interests at the table to forge a compromise. With remarkable social skill, the state representative (working closely with the FSC) helped shepherd through a final draft of a government-sponsored "UK Woodland Assurance Scheme" that assured domestic landowners that they were not beholden to the FSC while, *de facto*, institutionalizing the FSC's norms and rules into the state regulatory mechanism through a certification option. The strategy the Forestry Commission representative pursued - which favored informal, semi-private, multi-stakeholder consultations- helped enable competing groups to meet and negotiate under the facilitation of the state. However, as a resilient industry-controlled rival grew in stature in continental Europe the following year, still-suspicious landowners saw a new opportunity to wrest away the creeping control and legitimacy of the FSC. By 2001, they had begun to successfully leverage their new alliances with their European allies to renew their struggle against the FSC, principally by questioning its legal authority at the EU-level.

The United States: Great Potential, Great Conflict

Like Britain, the United States was the birthplace of much of the initial enthusiasm and entrepreneurship that led to the formation of the FSC. And, like its cousin across the Atlantic, it boasted of many of the same promising pre-conditions - widespread public concerns over tropical forest degradation, boycott campaigns, ideological support for market-based alternatives, etc. - that helped ensure a strong start for the FSC in Britain. Unlike in Britain, however, the ensuing effort to institutionalize the FSC's mandate has been met with only modest successes accompanied by growing threats posed by an industry-sponsored alternative.

In the United States, support for the FSC first emerged from a small group of woodworkers, community forestry activists who had worked abroad, and a handful of small manufacturers and landowners who shared convictions that developing an alternative market mechanism to support sustainable forestry operations was the right thing to do. Joining forces with colleagues abroad (especially the UK) to form the FSC in 1993, the American coalition took its cue from British counterparts and began forming domestic buyers groups shortly thereafter. Buyers groups efforts were eventually amalgamated into a single organization, the Certified Forest Products Council, which counted among its members Home Depot and Nike.

But while demand-side mobilization proceeded at a modest pace, supply-side efforts were meeting with far more resistance. The major domestic producer lobbying organization (the American Forest and Paper Association) took notice of the FSC's efforts early on, and in 1995 introduced its own, alternative labeling scheme. As in England, a public relations battle between these two groups ensued, but at a much grander level. Meanwhile, several of the FSC's own working groups in the U.S. which numbered nine to cover the diversity of the

territory, became mired in a number of conflicts between different stakeholders as they sought to develop regional standards.

As of late 2001, a draft of FSC national standards had been completed, but several U.S. working groups were still hammering through debates over standards and indicators. Meanwhile, the major industry alternative program was set to aggressively launch its own “third party” certification option, replete with a label and claims of authenticity, that would entirely bypass the structure of the FSC. All the while, the commitment of large retailers to preference FSC products remained tentative and tepid, and very few FSC-certified products were making it to store shelves. In spite of some modest signs that the FSC remained a formidable actor, at the time this dissertation was completed the fate of the FSC alongside the industry alternative - co-existence, harmonization of standards, or the eventual dissolution of the FSC and the NGO-based para-regulatory form it represented - remained unknown.

Juxtaposed to the British case, many of the underlying causal mechanisms shaping the U.S. experience are obvious. But others are more subtle. An examination of power relations along the commodity chain for wood products in the U.S. reveals a domestic producer industry that is far more economically powerful than in Britain. The United States is the single largest wood producer in the world. The powerful and centralized trade association (the American Forest and Paper Association) mounted, from the very beginning, a well-coordinated and aggressive campaign to dismantle the FSC. But the relative power of domestic producers can only be part of the story; had leading retailers worked aggressively in tandem with leading NGOs to pressure domestic suppliers in unison, supply-side responses may have been more sympathetic. Furthermore, the United States did witness some early enthusiasm from private and state forestry operations (e.g., State of Pennsylvania, Collins Pine, and Seven Islands). But unlike the case in Britain, the take-up of supply appeared to stall.

Five factors help explain why a potentially promising beginning partially de-railed in the United States. First, the coalition seeking to build domestic demand did not initially benefit from the tightly-coordinated cooperation and choreographed follow-through of leading retailers and dominant NGOs characteristic of Britain. Powerhouses such as Home Depot supported the FSC publicly but did not coordinate their efforts with other buyers. Domestic NGO support of the FSC was also uneven and fractious - some leading NGOs opposed the program on the grounds that it might encourage wood consumption or adoption of plantation forestry; sometimes, even regional offices of the same organization (such as the Sierra Club) differed in their opinions. Second, existing regulatory norms in the forestry sector in the United States - adversarial, law-suit based, and divided between federal and state jurisdictions that traditionally operated through command-and-control mechanisms - mitigated against centralized and informal compromise and coordination between actors necessary to overcome conflict. Anti-trust laws also prohibited the kind of competitive cooperation to pressure suppliers among retailers seen in Britain. Third, land tenure patterns and practices of forestry operations in the United States made the prospect of getting certified appear much less necessary and more cumbersome and expensive for landowners. Fourth, from the very beginning the FSC coalition faced a much more uphill battle in efforts

to naturalize their cause alongside existing shared cultural symbols and beliefs regarding forestry practices and their oversight. Lastly, although the FSC actively sought state legitimation through pilot projects on public lands early on, few state bodies came forward to publicly endorse the effort.

The Big Picture: Shifting Taken-for-Granted Constructions in Transnational Governance Fields

At the time this project was completed in late 2001, the fate of the FSC as a C&L program in countries around the world was uncertain. The continuing regulatory and legislative conflicts evident in many countries and multilaterally, coupled with the renewed determination of industry-led alternatives to undermine the FSC's mandate, suggest that its limited successes in building supply, demand, and legitimacy are fragile. At the same time, however, as a coalition of actors working at both the international and domestic levels to disrupt existing formal and informal rules and conceptions of control governing trade in wood products, the FSC's efforts may have helped to naturalize and legitimate alternative norms and practices that emphasize transparency, public accountability, and support for more stringent environmental, economic, and social performance criteria. As a consequence, over time the FSC's influence has extended beyond the limited successes of its institutional effort to affect the governance fields surrounding the global wood products trade more broadly. Such spillover has occurred principally through *creeping isomorphism* and the *convergence of norms*.

In several countries that have witnessed the ascendance of the FSC, competing alternative programs that originally appeared to thwart its efforts have, seemingly paradoxically, slowly morphed to embrace and embody (at least on paper) many of the same rules and norms within their operations. There is no doubt that, in cases such as the United States, Canada, Britain, and other Western European countries, industry-alternatives have sought to superficially re-make themselves in order weaken criticism from FSC-favoring opponents. Nonetheless, the fact that these initiatives now find themselves at least symbolically embracing heretofore alien practices and beliefs- e.g., the public's right to demand third party accountability; the appropriateness of performance criteria in addition to management processes; the inclusion of community benefits into forestry standards - suggests that broader taken-for-granted understandings about what is proper and just in forest regulation have begun to shift. In the two domestic case studies highlighted in this project, after bouts of pointed criticism in the media, competing industry initiatives re-invented themselves on a regular basis to claim, at least symbolically, support of many of the same principles originally advocated by the FSC.

Creeping isomorphism and convergence of norms has not been limited to private industry-led initiatives: in a number of countries where pressure for FSC certification has been exercised, national governments have stepped in to broker and develop state-based certification and labeling programs. In some cases, such as in Britain and Sweden, these efforts have been harmonized to be FSC-compatible; in others, such as Canada, Finland, and Malaysia, governments have introduced alternative schemes that remain independent (and sometimes highly antagonistic) to the FSC. In a few cases, such as the United States, national

and regional governments still remain agnostic and largely external to the certification debates. But, even in these countries, *de facto* legitimation of several of the procedures and principles first articulated by the FSC is evident in statements and position papers issued by forestry regulatory authorities and regional and federal governments.

Trends toward convergence are also evident within intergovernmental and aid bodies: since 1998 the World Bank has worked with WWF-international in a “partnership” to certify 200,000,000 hectares of environmentally and socio-economically “well managed” forest area around the world by 2005, under principles and criteria that are almost identical to those advocated by the FSC (*WWF-World Bank* Press Release 17 August 1998); the MacArthur Foundation has become a strong advocate of certification programs (MacArthur Foundation 1997); and a variety of UN and aid agencies, while not in agreement about the FSC’s viability or potential effectiveness, nonetheless embrace its broader mandates for non-governmental participation and oversight in community forestry. Clearly, a number of these trends began concomitantly with the FSC and stemmed from broader new fascination with “market-based” instruments to promote sustainability; the FSC was certainly not the sole engine behind them. Nonetheless, I find substantial evidence that the coalition driving the development of the FSC has worked directly and indirectly to win explicit and implicit support for its objectives from these organizations.

IMPLICATIONS FOR POLICY

Sometimes Effective, But For All The (Wrong?) Reasons

The FSC was originally understood by observers (and itself) as an international, consumer-based, voluntary, effort. Prognostications of its potential success or failure were originally premised on this apparently self-evident set of characteristics. Ironically, however, the present study suggests that the FSC has made inroads to the degree that it has transformed itself into something very different. First, as the model of a “consumer” based market certification programs, the evolution of the FSC has had *little to do with preferences of individual consumers*. Rather, major retailers, motivated principally from watchdog group pressure, ultimately serve as the proximate agent for shaping the mainstreaming of certification efforts in their home countries and abroad through their supplier networks. Second, as a case study of the power of a “voluntary” alternative to state-based regulations, the FSC has been most effective in markets where it has *become less voluntary*. The FSC has succeeded to the degree that it successfully institutionalizes its program as a *de facto* cost of doing business for particular segments of the market. Third, as a nominally “international” program that seeks to introduce mechanisms to influence global markets, the FSC is constituted by fundamentally multi-national institution-building exercises: the national political-economic, regulatory, and cultural frameworks that inform domestic markets are the primary variables that shape outcomes, and outcomes are forged out of conflicts waged largely within national borders. Lastly, as an exemplar of a “non-governmental” coalition, in practice the FSC has grown more robustly in countries when it has received *strong state legitimation and support*. The

state, and its relationships with other stakeholders in the regulatory domain, also shapes the initial distribution of power and influence in the commodity chain. States are significant actors not just as sovereign arbitrators and mediators; they also often stand as major producers and/or consumers of wood products.

The consequences of these findings for policy debates over the potentials and limitations of voluntary, market-based oversight programs are significant. Perhaps most obviously, in their appraisals of C&L program effectiveness, policy observers must differentiate between the apparently self-evident nature and claims of C&L programs - that they are market-based instruments driven by the preferences of consumers - and the forces and strategies in the realm of *realpolitik* that shape their outcomes. In the case of the FSC, it may be comforting to know that its success has not really depended on the fickle preferences of consumers, but the question remains open whether its reliance on effective coalitions constituted by powerful purchasers and well-heeled NGOs is any more reliable or appropriate, especially given marked contrasts in the success of this strategy across nations and over time. Secondly, the fact that the most celebrated C&L program to date has been most successful in markets where its mission has become “statified” and at least partially institutionalized as a *de facto* cost of doing business suggests that C&L programs may not be viable and effective policy instruments if they remain true to their self-proclaimed voluntary and non-governmental identity.

Missing the Forest for the Trees? The Broader Significance of the Forest Stewardship Council

While the comparative multi-national analysis of the FSC undertaken in this project suggests that the viability and effectiveness of voluntary, consumer-based non-governmental labeling programs may be questionable, the study also highlights more subtle but nonetheless profound ways in which they may serve as vehicles for policy change. Whether or not the FSC survives as a third party certifier is unknown; but what appears more certain is that many of the structural, institutional, and normative dimensions of its strategy have begun to influence formal and informal shared understandings among state and private actors regarding what should be regulated in international wood markets, who should be empowered to enforce such rules, and how enforcement should be undertaken.

The observation that the FSC has been perhaps more effective as a challenger seeking to influence the taken-for-granted rules and norms that define regulatory oversight suggests that NGO-coordinated C&L programs may lose their individual battles but could help win a broader political war to re-fashion the behavior of firms. In other words, the FSC and other C&L programs may be most significant as policy instruments *not* to the degree that they penetrate markets, but rather the extent to which their participation helps catalyze changes in the relations of power, prevailing practices and norms that govern regulation of international commodity markets. Based on the evidence collected for the current project, it is unclear how significant such catalytic effects could be, and to what extent they might actually result in socio-economic and environmental improvements in the production settings. Further

research is needed to help shed light on these second-order outcomes. Several contributions to this volume offer a valuable start.

“Sustainable” Democracy in Practice? Opportunities for Learning from the Trials and Tribulations of an Imperfect Experiment

As this study illustrates, the FSC began as enormously promising but complex and troubled new social animal. While this analytical project focuses principally on the interactions between FSC advocates and other social groups, the investigation does highlight several dimensions of the FSC experience whose further study may reward future policy researchers with valuable insights into potentials and limitations of multinational attempts to “practice” sustainability. Many of the contributors to this volume have already begun to take advantage of such opportunities.

First, the FSC stands as a rich case study of the potentials and failures of multi-national efforts to reconcile long-standing conflicts over how sustainability should be defined and operationalized in real-world settings. Drawing up a set of 10 guiding principles and criteria that would apply universally but permit adequate room for tailoring to diverse economic, social, and biophysical environments was certainly an ambitious task. But the conflicts over standards that have ensued, both with industry and among the regional working groups, are telling indicators of the obstacles such a task entails (in spite of the FSC’s effort to steer clear of the politically dangerous term “sustainability”!). Some participants contend that ongoing debates and reformulations of standards and practices are signs of a successful program undergoing continual learning; other critics believe the job is just plain impossible. A closer look at how C&L programs such as the FSC have succeeded and failed in their efforts to operationalize their principles may tell us much about the art of the possible in forging universal definitions of what “sustainable” production practices would look like in the global marketplace.

The FSC also serves as a case study of the perils and possibilities of new forms of democratic coordination between local groups and global coordinators as they try to “think locally” and “act globally.” As an articulated consensus-based organization, the FSC has struggled between de-centralized “radical” democracy in local settings, on the one hand, and centralized bureaucratic authority at the international level, on the other. Some close observers interviewed for this study contend that “too much” democracy has weakened the institutionalization effort and jeopardized the FSC’s future. Others chastise the parent organization for being overly bureaucratic and out-of-touch with real-world production settings, especially in tropical countries. Whether one or both claims are correct remains an empirical question, and is of broad significance to policy observers appraising the usefulness of different governance models.

Lastly, the FSC still stands as one of the most determined attempts reconcile sometimes seemingly insurmountable tensions between the values and priorities of competing constituencies that rarely work well together: developed country representatives vs. developing country, big business vs. the small entrepreneur, community forestry activists versus traditional conservationists, to name just a few. There is no doubt that the FSC’s

efforts to balance differences in positions and power between competing constituencies has been imperfect; but the fact that the organization has managed to try to do so for almost a decade without collapsing or becoming completely paralyzed inaction (as have most other attempts) is worth a much closer look, indeed.

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FOREST CERTIFICATION AS A GLOBAL CIVIL SOCIETY REGULATORY INSTITUTION*

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INTRODUCTION

Forest certification is a process through which transnational networks of diverse actors set and enforce standards for the management of forests around the world. The central purpose of forest certification programs is to verify for interested outsiders that the management activities of certified enterprises are acceptable and appropriate. In doing so certification programs take on important public roles. First, they define what kind of behavior is acceptable and appropriate. They do this in various ways.¹ Some programs include considerable public input and participation, others very little. Some stress multi-stakeholder decision-making while others rely entirely on industry associations or firms. No major

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¹ As has been described at length elsewhere (e.g., Bass and Simula 1999; Meidinger 1999) forest certification programs follow two basic approaches to defining acceptable behavior. In the first, the certification program sets substantive performance standards to be met by all certified firms. The Forest Stewardship Council (FSC 2001), for example, requires that “forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest”. This requirement is further defined in national and regional standards, which establish concrete criteria and indicators for compliance. FSC certification also requires firms to respect applicable environmental laws, protect the well-being of workers and communities, and so on. (FSC Website) The second approach to certification is essentially procedural, requiring firms to implement environmental management systems (EMSs) with defined responsibility structures for planning, operations, monitoring, corrective action, and so on. Thus, the substantive standards to which firms are to conform are set largely by the firms themselves, although they remain subject to governmental regulations. The primary focus is on instituting organizational mechanisms in the firm for goal setting, planning, monitoring, and corrective actions. The cardinal example is the ISO14000 program established by the quasi-public International Organization for Standardization, which is based in Geneva but has affiliates in most countries. The motor of the ISO 14000 system is the “continuous improvement” requirement. The underlying assumption is that dynamic EMSs will achieve superior environmental performance over time, while facilitating greater efficiency and adaptability than substantive

certification program, however, relies primarily on the policy formation processes of government.² Second, certification programs establish mechanisms to enforce their policies, and to provide public assurances that they are being met. Again, most do not rely on existing governmental enforcement programs. Rather, they devise their own organizational monitoring, auditing, and adjudication³ systems, and seek to establish credibility independent of government agencies.⁴ Products from certified forestry enterprises are generally entitled to display a logo that is meant to signify their social propriety.⁵

The environmental policy-making and enforcement functions undertaken by certification programs have been performed primarily by governments for at least the past century, and longer in some societies. Hence the initial theoretical challenge is how to conceptualize certification programs. Given that they are not governmental initiatives, much of the existing literature describes certification programs as ‘market mechanisms’ or ‘market driven.’ But these descriptions are true only in the loosest sense, in that certification programs seek to achieve their goals by restructuring producers’ relationships to consumers through markets. At base, the groups that have pioneered certification programs, primarily the Forest Stewardship Council⁶ and affiliated advocacy organizations such as the World-Wide Fund for Nature, Rainforest Alliance, and Friends of the Earth (Elliott 2000), have not

standards. It is of course possible to combine substantive and procedural approaches, and many systems do so to some extent. The FSC, for example, has a modest EMS requirement, and the Canadian Standards Association places heavy stress on the EMS while incorporating modest substantive standards.

² I use the term “government” to refer to the multiple organizational structures of nation states, including their subunits and intergovernmental organizations. My use of the term is reflects a desire to keep to a minimum the theoretical implications often associated with “the state” in Western, and particularly European thought, and also to allow for the great variability in agencies and institutions operating under the rubric of government.

³ “Adjudication” here refers to decisions about whether particular cases meet general criteria, regardless of whether the decision maker is a judge, and administrative official, or an actor outside the government.

⁴ There are some exceptions to this statement, primarily the emergent Pan European Forest Certification Council program (Sprang 2001) and the longer standing Lembaga Ekolabel Indonesia (LEI) (Elliott 2000). Both of these programs, however, have been driven by the civil society movement, and can be understood as catch-up efforts by governmental agencies to recapture a leading role in the field.

⁵ The FSC logo, for example, is a somewhat deciduous looking conifer joined to the long side of a check mark. The American Forest and Paper Association recently changed its logo for the Sustainable Forestry Initiative from one containing both kinds of trees with a bear and fish circling them, presumably invoking an ecosystem image, to one of



⁶ The Forest Stewardship Council is an international organization founded in 1993 to promote the sustainable management of forests around the world. Although it has received support from foundations, environmental NGOs (particularly WWF), and some governments, mostly European, it is a free standing organization which devotes its resources primarily to the setting of forest management standards and to the accreditation of certification organizations whose role it is to determine whether particular management organizations meet the standards. For more thorough descriptions, see the FSC website <http://www.fscoax.org/principal.htm> or Meidinger (1999:130-182).

been responding to market forces. Rather, they have sought to harness market forces to the pursuit of environmental protection and other social and ethical goals. Their objective has been to institute predictable, long term ordering of the behavior of forestry firms - i.e., "social regulation of the market" (Haufler 2001). Hence, while market forces are undoubtedly crucial to the success of certification programs, market constructs provide only a partial understanding of the social dynamics of forest certification.

One of the primary theoretical constructs used to conceptualize organized efforts to shape social behavior beyond the domains of government and market - and one occasionally invoked by promoters of forest certification - is that of 'civil society.'⁷ The purpose of this paper is to elucidate both forest certification and the concept of civil society by locating forest certification in the larger context of civil society theory and practice. It first provides a general overview of the 'civil society revival that occurred during the past two decades. Next it summarizes the arguments that we are in the midst of the development of 'global' civil society. Within that framework, the focus shifts to the world of forest certification, which is described in terms of the basic elements of global civil society - actors and organization, substantive values, and methods. The paper concludes with a few brief thoughts on the likely implications of forest certification for global governance.

This paper is offered in conjunction with a second one (Meidinger 2002), which pursues one of the obvious implications of the analysis presented here - namely, that forest certification, in its effort to institute clear, enforceable standards for forest management, might fruitfully be viewed as a kind of non-governmental law making. After briefly reviewing the arguments for understanding civil society as a law maker, the paper brings some of the experience of legal scholarship to bear on forest certification. It argues among other things that it would behoove forest certification programs to become more sophisticated about the challenges of enforcing rules effectively, the need to learn and adapt based on experience, the challenges of creating consistency across highly varied situations, and the general challenges of achieving legitimacy. Together, the two papers seek to develop an understanding of the potentially sweeping implications and daunting challenges of forest certification for public governance.

PERSPECTIVE

Because forest certification is a contentious, highly politicized field, a word on perspective is in order. Mine is primarily that of an academic researcher interested in two fundamental questions of institutional sociology:

1. How are social rules and standards made?
2. How are rules institutionalized in social behavior?

⁷ The term is used broadly here to include a variety of formulations which seem to be based on the same basic set of ideas, such as the "third system" discussion represented by Nerfin (1986) and Korten (1990).

The forest certification movement is a fascinating and potentially important arena for studying these questions because it may be one of the leading edges of emerging institutions for making and enforcing rules on a global scale.

At the same time, my interest as a researcher is not merely academic. One of my goals is to help understand how to build social institutions that promote environmental stewardship and social justice. This paper and its companion attempt to do so by clarifying some of the relationships between forest certification and global civil society, and by bringing some of the experience with governmental regulatory and legal institutions into the forest certification debate, which thus far has tended to be limited to foresters and environmentalists who think all they are doing is trying to promote sustainable forest management.

METHOD

This paper is best seen as an exercise in imaginative social theory. It takes two general, contested, and “under construction” concepts - global civil society and forest certification - and seeks to situate forest certification in terms of them. Starting from the hypothesis that forest certification is part of a larger process by which institutions of global civil society are being constructed, it draws upon global civil society scholarship to illuminate important social dimensions of forest certification. At the same time, research on forest certification is used to suggest some of the prospects and challenges facing global civil society.

This methodological strategy is subject to important limitations. First, it entails a degree of arbitrariness. Another scholar following a similar method could focus on different factors within these broad frameworks and perhaps reach quite different conclusions. Second, it is inevitably “political.” To view forest certification as a form of global civil society governance is to stress the non-governmental pursuit of social accountability, and to highlight its potential for reducing or complementing governmental power. Moreover, the meaning and existence of global civil society are hotly contested. Although it is used as an analytical construct here, the term can also be used as a political slogan and an ethical ideal (Seligman 1992:201). Hence use of the term necessarily gets caught up in normative and ideological arguments, wittingly and unwittingly. Both of these limitations are mitigated considerably, however, by the fact that this paper will be part of a larger discussion of forest certification, global governance, and environmental law. It is likely to be complemented and challenged by other works, and its arguments will soon be grist for their mill.

CIVIL SOCIETY

In the mid-1980s I had a memorable conversation with two colleagues in my university’s Native American Studies Program, Professors John Mohawk and Oren Lyons. We were discussing a possible joint course in American Indian Law. As we talked about Native land claims in the US, our conversation turned to the efforts of the Brazilian government at the time to remove indigenous peoples from their land in the Amazon rain forest. When I

expressed pessimism about the natives' prospects, Oren surprised me with his confident reply. He said something like: "The Brazilian government should know they can't keep doing that. The whole world is watching, and the whole world knows this is wrong. We'll see it on TV tomorrow, and we can make a lot of trouble for them." When I asked how such trouble would be made, he and John offered a variety of examples, including picketing Brazilian embassies, protesting at the UN (where Oren would soon be giving a speech), pressuring the World Bank, and possibly provoking consumer boycotts.⁸ When I countered that the major media might not even publicize the land battles in Brazil, John replied with his usual droll humor: "Well, we have computers, too. Usually we just set our coffee on them, but we do know how to turn them on." The "we" they were referring to was a network of indigenous peoples and their allies around the world. Oren looked into the northern distance out my office window and noted that the Sami people of Scandinavia would be just as willing to join the battle as the Haudenosaunee,⁹ since all indigenous peoples have essentially similar claims to justice among the peoples of the world.

My colleagues might resist being described as part of a civil society movement, since, like most indigenous groups in North America and perhaps around the world, the Haudenosaunee prefer to define themselves as sovereign.¹⁰ Yet, the expectations, processes, and structures they were describing are very consistent with what is coming to be called global civil society. Before describing the global variant, however, it is useful to provide a brief overview of the traditional, more locally oriented concept of civil society.

DOMESTIC

Like "sovereignty," the term "civil society" is an evolving and often contested construct whose meaning has varied in different times and places (e.g., Ehrenberg 1999). In modern academic discussions it generally refers to a sphere of social life that is public, but outside the sphere of government. Most references also exclude the realm of intimate associations, although American commentators sometimes include the family in discussions of civil society because of its important role in producing and reproducing fundamental societal relationships. In addition, with the exception of neo-liberals, most commentators treat civil society as distinct from typical market relationships, which focus on matching prices and quantities to facilitate the exchange of goods and services (e.g., Cohen and Arrato 1992). Diamond offers a relatively conventional definition:

⁸ I do not think whether they listed the possibility dealing directly with the corporations doing business in Brazil. Today they probably would mention this option in the same sentence.

⁹ "Haudenosaunee" is the name used for themselves by the people whom the Europeans labeled the "Iroquois". The latter term, which translates as "real adders," came from the Algonquins, traditional enemies of the Haudenosaunee (Mohawk 1996).

¹⁰ The Haudenosaunee are organized as a federation of six nations, (the Cayuga, Mohawk, Oneida, Onondaga, Seneca, and Tuscarora. (The Tuscarora migrated from North Carolina and joined the Confederacy in the early 18th century). They issue a single passport, which has been accepted by a number of nations around the world. (Personal communications from Oren Lyons and John Mohawk.)

[Civil Society] is distinct from “society” in general in that it involves citizens acting collectively in a public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. Civil society is an intermediary entity, standing between the private sphere and the state. Thus, it excludes individual and family life, inward-looking group activity (e.g. recreation, entertainment, or spirituality), the for-profit-making enterprise of individual business firms, and political efforts to take control of the state (1996:228).

Most theorists also portray civil society relationships as voluntary or un-coerced (e.g., Walzer 1995). Although the true degree of voluntariness of some civil society relationships is subject to question, they generally lack the sanctions associated with government directives. Nonetheless, civil society organizations have long been viewed as playing a powerful role in governing society. Gramsci, for example, depicted civil society organizations (epitomized by the Catholic Church) as achieving a high level of social influence by exercising cultural leadership (“hegemony”) despite their general lack of state power (Gramsci 1971; Nielsen 1995).

There are many types of civil society organizations. Walzer’s examples (drawn from recent Eastern European experience) include “unions, churches, political parties and movements, cooperatives, neighborhoods, schools of thought, societies for promoting or preventing this and that” (1995:8). Mertus adds “non-governmental advocacy organizations, humanitarian service organizations, . . . information and news media, educational associations, and certain forms of economic organization,” leaving the specific nature of the last to be filled in (1999:133). Conceptualizing the relationship of economic organizations to civil society is difficult, and may grow more so in the forest certification context, where trade associations and large corporations are becoming increasingly active (Kim and Carlton 2001). As Virginia Haufler (1999) suggests in a related context, it would not make sense to ignore business associations that are seeking to define the conditions of socially responsible commerce, even if they are driven by the quest for profit. Accordingly my working approach is to treat those aspects of business organization which are oriented to defining and institutionalizing public accountability outside government agencies as civil society actors.¹¹

While the overall sphere of civil society is portrayed as either value neutral (e.g., Etzioni 2000) or limited to very general values such as freedom and tolerance (e.g., Keane 1988), specific civil society organizations are typically involved in “promoting or preventing this or that” (Walzer 1995:8). They can be characterized by a commitment to particular substantive values, or visions of good society, and their purpose is to promote those visions. Thus they regularly engage in moral evaluation, often using the “mobilization of shame” to achieve their goals (Mertus 1999:1367). Moreover, since civil society organizations promote moral evaluation, it is not surprising that they also are subject to it. Thus, their methods and strategies are inevitably vulnerable to critique, and they are frequently under pressure to improve them. Today the primary pressures are to be more transparent, democratic, and accountable (Mertus 1999:1367) and to eliminate exclusionary membership practices

¹¹ The major risk, not addressed in this paper, is that business will so dominate civil society as to effectively destroy it (Ehrenberg 1999).

(Williams 1997). Although these pressures may follow logically from the premise that civil society organizations are voluntary in nature, they are equally present for governments and to a lesser extent for firms.

Of course, civil society is a normative concept as well as an empirical one. Much of its appeal to modern thinkers rests in its role as a bulwark for human dignity and self-determination against both the state and the market. Although this function was already important for De Tocqueville (1875), it was critical in the rebirth and elaboration of the civil society movement in Eastern Europe during the late 1970s and 1980s. There, activist intellectuals developed the idea of civil society into a vision in which groups could self-organize in semi-autonomous spaces outside the purview of the state. Their goal was not to “seize power” from the state, but rather to humanize the relationship between state and society by establishing new or renewed patterns of interaction in civil society (Michnik 1985). Their efforts became part of a larger European movement, which drew together Western European peace and Eastern European human rights organizations, and which Mary Kaldor (1999) portrays as the birthplace of the modern civil society movement, although this portrayal may be overly Eurocentric.¹²

The importance and successes of the Eastern European civil society movement helped bring the concept back to the fore in academic discussions around the world. Among other things, it led many theorists to shift from a focus on “government(s)” to “governance” (e.g., Rosenau and Czempiel 1992), although other academic currents too numerous to note also contributed to this tendency (Prakash and Hart 1999). Research on civil society tends to focus on (1) the types of actors involved, (2) the substantive values they pursue, (3) the processes and methods they use, and (4) their relationships to other sectors of society. Each of these topics is discussed in the next section. While government, civil society, and the market can be distinguished analytically, however, they are operationally intertwined. The three spheres are also mutually interdependent; shifts in one are likely to affect the others, and often are intended to do so. Therefore researchers focusing on one sphere are wise to trace its relationships to others.

GLOBAL

In the course of the 1980s, various civil society and peace movements from different regions gradually drew together into a transnational network of relationships and activities. In fact, although not everyone recognized it at the time, regional and issue-specific civil society movements were coalescing into a general, world-wide one (Keck and Sikkink 1998). The goals, methods, networks, and social roles of the European civil society movement were increasingly linked to those of the indigenous peoples’ network described at the beginning of this section and to other social movement networks around the world (Wapner 1996; Keck

¹² As indicated by my discussion with Professors Mohawk and Lyons, there was a contemporaneous and perhaps even earlier movement among indigenous peoples. A definitive account of the origins of the global civil society movement is not an objective of this paper, however, and might not even be possible, given that the movement seems to have sprung up from many relatively independent social arenas.

and Sikkink 1998; Taylor 1999; Florini 2000).¹³ Implicitly attributing the movement with institutional durability, academics and activists alike began to talk about “international” and “transnational” and even “global” civil society. Thus, although the civil society had been conceived, born, and raised inside territorially bounded states, it leapt the bounds of the states, and arguably the received conceptual framework as well.

What, exactly, is distinctive about “global” civil society? According to Falk and Strauss, it is, quite simply, globalization:

Globalization has generated an emergent global civil society composed of transnational business, labor, media, religious, and issue-oriented citizen advocacy networks In one of the most significant, if not yet fully appreciated, developments of the post-Cold War era, global civil society - operating in collaboration with certain like-minded states - has become a formidable political presence in international life, pushing forward several key progressive initiatives in the international arena. (2000:194)¹⁴

Facilitating Elements

Since globalization is a broad and somewhat wooly concept, it is helpful to list a few factors that seem to be key in the globalization of civil society. My goal is not to offer a persuasive causal account of globalization, nor even to rank factors in importance or time. Rather, it is to indicate that they have played causal roles and remain important characteristics of global civil society. These factors also play a central role in framing the strengths and weaknesses of global civil society regulatory programs.

1. *Global Information Technologies*. As Professors Lyons and Mohawk pointed out in the mid-80s, the rapid development of global information technologies was a critical factor in the creation of transnational coalitions and organizations. Included are technologies for gathering information (from traditional cameras to television cameras to satellite imaging to various kinds of emerging “real-time” sensors) and for communicating it (international newspapers and telecommunications systems, global television, the internet, and so on).

Critically important is the growing capacity of transnational advocacy groups to gather information, sometimes amounting to serious research, and communicate it on their own. Particularly important is their capacity to connect internationally marketed

¹³ Nonetheless, as Taylor and Seligman illustrate, there were still significant differences in the causes of those using the term. Seligman argues that whereas in the East it was used to advance the cause of individualism, in the West it was used to advance the cause of communitarianism (1992:203). Taylor provides an illuminating description of the typical differences in Latin America between locally based social movements and internationally based NGOs (1999).

¹⁴ The initiatives they refer to include the global climate change framework convention, the convention outlawing anti-personnel land mines, and the agreement to establish an international criminal court. The authors go on to argue that the time is ripe for a “global peoples’ assembly”. (Falk and Strauss 2000:196-204)

products to the local conditions under which they are produced (Evans 2000:234).¹⁵ These information technologies remain crucial to the operation of global civil society.

2. *Transnational Economic Structures.* It is a cliché that we live in a global economy, but a profoundly important one. The worldwide flow of raw materials and products, the integration of financial markets, the growth in multi-national firms and business alliances, and the creation integrated production chains running around the world, which are driving forces in globalization, also facilitate the emergence of global civil society. The emergence of worldwide production and consumption chains has increased the scope of both transnational interdependence and the externalities associated with market activities. People living on one side of the globe are increasingly dependent on decisions made on the other side. Decisions made on one side can have significant “external” effects on the other.

Such external effects can vary from the apparent reduction in employment in one region caused by increased employment in another, and perhaps increased profits in still another, to sea-level rises in low lying areas caused by fossil fuel burning and deforestation in other areas. One of the most striking current examples is the contamination of the arctic food chain by chemicals used as pesticides in temperate and tropical countries.¹⁶ In every case, actions taken in one governmental jurisdiction give rise to assertions of interest and grievance by people living outside that jurisdiction. Often, they choose to pursue correctives outside the intergovernmental negotiation network through transnational civil society networks. The very interdependence created by transnational production and consumption chains gives civil society actors located in one governmental jurisdiction leverage over behavior in others (e.g., Evans 2000; Fung, O’Rourke, and Sabel 2001; Keck and Sikkink 1998). At the same time, the difficulty of exerting that leverage is increased by the complex nature of the economic relationships. Often, a multitude of individual firms are tied together by temporary, shifting relationships in which power and authority are dispersed along the production chain, only occasionally concentrating at the retail end (Conca 2001; Gereffi 1994).

3. *Reduced Roles of Governments.* Although the causes and degree are subject to debate, it is quite apparent that governments have scaled back their ambitions as guarantors of public welfare in recent decades. To some extent this may be a function of the growth of the transnational economic system described above, which leap-frogs governmental

¹⁵ As Conca (2001) points out, this capacity to connect production conditions to consumption is made all the more essential by the enormous ‘distancing’ of production from consumption that comes with the creation of global production and consumption chains. Without the ability to create informational feedback loops, the capacity of civil society - or of governments, for that matter - to define, publicize, and attempt to ameliorate problems created by global production processes would continually lose ground to economic globalization.

¹⁶ Inuit activist Sheila Watt-Cloutier put the case as concisely as possible: “I wonder how we have created a global situation where mothers in the Arctic worry about poisoning their children through their very life-giving breast milk, while mothers in other countries rely on these same chemicals to protect their children from disease. This situation is not only immoral, but must be deemed intolerable”. (Brown 2001:A17) Widespread agreement on this assertion has led to the adoption of the Treaty on Persistent Organic Pollutants, one of the few recent instances in which the intergovernmental policy system shows promise of responding effectively to transnational civil society movements.

jurisdictions and can punish governments that try to enforce a high degree of social accountability. Recurrent internal fiscal crises have also been important, as have 'neo-liberal' political attacks on visions of protective government. In any case, the reduced ambitions of governments have made room for expanded ambitions of civil society organizations (Lipschutz 2001), and perhaps even created a demand for them. Some governments have even invited civil society organizations to take over a larger role in public governance (Taylor 1999:285-286).¹⁷

Salient Characteristics

Lipschutz's path breaking article started with a relatively open-ended definition of global civil society: "a set of interactions among an imagined community¹⁸ to shape collective life that are not confined to the territorial and institutional spaces of States." (1992:398) Today, the website of the LSE Centre for Global Governance lists about a half dozen definitions (LSE 2000; Kaldor 2000) reflecting the discussion that has occurred since Lipschutz's article. They are basically consistent with Lipschutz's, but tend to add specific features. Most of the additional features are portrayed as typical rather than necessary (LSE Centre 2000), and are described further in the next section. They include self-organization, semi-autonomous engagement with state agencies, non-violence, a frequently high degree of social contestation, and networked structures. John Keane's definition pulls them together into a dynamic image:

a complex, conflict ridden, transnational process in which, across vast distances and despite considerable time barriers, individuals, non-governmental groups and organisations, charities, lobby groups, citizen's initiatives, local independent media, corporations, [and] trade unions non-violently self-organise and interact in ever more networked ways, usually with and against state and non-state bodies, to alter, even to 'denaturalize' the power relations embedded in existing social and political orders, even to create shared understandings among actors that we live in an emerging transnational, even 'global order'. (LSE Centre 2000)

FOREST CERTIFICATION AND GLOBAL CIVIL SOCIETY

It requires little analysis to see that the above conception of global civil society is generally congruent with the world of forest certification. The primary purpose of this paper is not to offer a thoroughgoing analysis of forest certification in terms of civil society constructs, or to 'test' whether global civil society models fit forest certification better than other models. Rather, the purpose is to see how the global civil society attributes of forest certification can

¹⁷ In United States domestic policy this tendency has taken a new twist with the Bush administration, which has sought to create a larger role for "faith based organizations" in the design and delivery of domestic government programs (White House 2001).

¹⁸ The term "imagined community" is used not to imply that those who think of themselves as part of the community are deceiving themselves, but rather to note that the community's existence requires people to think of themselves as members of it. (See generally Anderson 1983.)

help us understand its policy implications and its relationship to law. Therefore, this section combines civil society scholarship with specific information about forest certification programs to create as sharp an image as possible of forest certification as a global civil society phenomenon.

ACTORS AND ORGANIZATION

Forestry has long been a sector laying claim to social trusteeship, with many western societies according foresters special status as guardians of public values (e.g., Barton forthcoming). Forestry also has had important transnational dimensions for a long time, because much forestry culture has been transmitted around the globe from countries like Germany and (much later) the United States through professional education. In general, the forestry sector has enjoyed a high degree of professional and operational autonomy, often combined with cordial or even close relations with government. When the movement for forest certification emerged, the forestry establishment was suffering a rapid decline in public trust. The decline was tied largely to public perceptions that forests were being harvested at unsustainable speeds, or often simply destroyed. Although North American forests were rapidly being clear-cut, deforestation of tropical forests probably brought the process to a head. The process I discussed with Professors Lyons and Mohawk regarding Brazil was being replicated with local variations in other parts of South America, Asia, and Africa, with many communities losing their land and traditional source of livelihood (Barracough and Ghimire 2000). As it grew increasingly clear that the traditional system of intergovernmental negotiation was incapable of addressing the tropical deforestation problem, there was a broad search for alternative solutions. One strategy that took off was forest certification (Bendell and Murphy 2000; Elliott 2000).

Although the history of forest certification remains contested, it is clear that the prime mover was and is the Forest Stewardship Council (FSC), founded in 1993 but planned for several years before that. Organized by a loose alliance of high-end North American furniture makers, environmental organizations, and foundations, the FSC was designed to operate without government participation. Initially it may have been conceived as an environmentalist-industry partnership (Bendell and Murphy 2000), but the industry role was relatively limited, and the FSC quickly evolved into a “multi-stakeholder organization” which its founding Executive Director has insistently sought to distinguish from an NGO (Synott 1998).¹⁹ In the eight years since its founding, the FSC has developed an elaborate, formalized stakeholder structure. Its primary governing body is an international “general assembly” composed of three chambers - environmental, economic, and social - holding equal voting power. Each chamber is further divided into a northern and southern sub-chamber, again with equal voting power. Among other things, the general assembly is responsible for approving regional and national forest management standards developed by regional and national working groups. Its other primary function is the accreditation of certifiers, who

¹⁹ Historical accounts of the Forest Stewardship Council and the American Forest and Paper Association Sustainable Forestry Initiative, are provided in Meidinger (1999).

have the formal role of determining whether forest management enterprises meet FSC standards. I have suggested that the role of certifiers is sufficiently significant that they might be viewed as the “judges” of the FSC system (Meidinger 2001a: 10164). They certainly perform functions similar in kind and importance to those of many administrative law judges in government licensing and permitting proceedings. Membership in the FSC is voluntary, although each applicant must find at least two existing members to support its application. The FSC currently has over 450 members, approximately two-thirds of which are organizations (FSC Website 2001).

The FSC has provoked the rapid development of contending certification systems, some of which claim to have predated the FSC, but none of which did so in the form of a functioning certification program. The different programs are too complicated and variable to describe in detail here.²⁰ It suffices to note that some, such as the Sustainable Forestry Initiative (“SFI,” see AF&PA 2001) of the American Forest & Paper Association (“AF&PA”), are closely aligned with the forest products industry. Others, such as the Pan European Forest Certification Council (“PEFC,” see PEFC 2001, Sprang 2001), are also industry based, but involve a much larger government role, reflecting the traditionally close cooperation between government and the forestry industry in Europe. Depending on how one counts, there are anywhere between a half-dozen and fifteen different certification programs (CEPI 2000).

All of the forest certification programs self-consciously operate in a larger context best described as a sprawling, largely unmapped, highly changeable, loosely networked social field in which there are several centers of activity that closely monitor each other. It includes many environmental organizations, large and small production, wholesale, and retail firms, trade associations, professional certifiers, labor unions, human rights organizations, indigenous groups, government agencies and officials, consultants, charitable organizations, citizen activists, academics, research institutes, community groups,²¹ and undoubtedly many other types of actors. Simply categorizing all of the participants is a serious exercise in social theory (e.g., Elliott and Schlaepfer 2002, Cashore 2002). Relations among them involve a complex, shifting mix of mutual observation, direct communication, trust, distrust, mutual adjustment, cooperation, coordination, and competition. All of the actors are clearly aware that they are part of a larger arena of forest governance and regulation. It is possible (but not clear) that shared educational experiences are also an important source of linkage. Empirical research characterizing these relationships and their history would help considerably in understanding the governance capacity of the network, as it has in the case of ozone policy networks (Canan and Reichman 2002).

The forest certification network is linked to other civil society policy arenas, such as labor, human rights, and community development in a variety of ways, including shared

²⁰ See generally, Bass and Simula 1999; Hansen and Juslin 1999; Meidinger 1999; Sprang 2001.

²¹ Lucy Taylor provides an insightful analysis of the ways in which social movement community groups have become linked to each other as well as to transnational NGOs and funding sources in course of the global civil society movement. She also describes some of the ways in which social movement organizations have had to transform themselves to deal with the more ambiguous, less clearly good versus bad problems that have come with the democratization of many Latin American governments (1999:283-286).

members, funding sources, communications channels, and in some cases political goals. The forest certification network is also linked to specifically certification-oriented activities in other policy arenas, apparently reflecting a growing focus on organizational methods and techniques in global civil society at large. The linkages occur both through the exchange of information, ideas, and sometimes resources (Dalton and Rohrschneider 1999), and through participation in organizations such as the giant International Organization for Standardization ('ISO'), the tiny International Social Environmental Accreditation Labelling Alliance (ISEAL 2001; Meidinger 2001b), and the intermediate European Organization for Conformity Assessment ('EOTC'). Large foundations also appear to provide important linkages among social and environmental labeling organizations.

SUBSTANTIVE VALUES

As noted above, civil society organizations generally promote particular values. For the most part, these tend to include social justice elements and at least some concept of the proper ordering of society. In the forest certification arena, most if not all actors embrace the value of "sustainable forest management." The question is, what constitutes sustainable forest management? There is considerable disagreement with regard to this question, as some groups promote more environmentally protective standards while others promote less protective ones, some promote community oriented standards while others promote industry oriented ones, and so on.

There are several other interesting commonalities in value, however. First, many actors in the arena behave as though they believe that a single definition of sustainable forest management is both possible and desirable. Such an assumption does not seem to characterize most other policy arenas.²² If my characterization of the forest certification network is correct, it is hard to say why that would be so. One possibility is that forestry is such a long-standing and heavily professionalized sector of civil society that many participants have been socialized into the shared assumption that there are generally correct forest management policies and decisions. A second possibility, more grandiose but potentially shared with other civil society movements, is that humankind as a whole holds certain fundamental values that civil society organizations should promote. This might be similar to the "conscience of humanity" standard invoked in civil society debates on human rights and peace (e.g., Falk 1997; Barkan 2000)²³ and possibly to natural justice (Schwartz

²² Indeed, Matthias Finger argues that one of the major shortcomings in the emerging global system in which international NGOs play an expanded role is a dissolution of shared values: "Substantive political objectives, . . . such as equity, justice, and human rights, are increasingly replaced by expressive objectives, that is, basically the call of various actors for the right to express themselves" (1994:57). This, of course is an empirical assertion that could be empirically tested, although to my knowledge it has not been. It is also possible that international environmental NGOs have realized the need to coalesce around shared objectives, and have started to do so since Finger wrote.

²³ Interestingly and importantly, substantial evidence from opinion polls indicates that there is essentially global agreement on the necessity of protecting the environment. The level of support for environmental protection, including the willingness to accept added costs, does not seem to vary significantly among affluent and less affluent nations (Dunlap et al. 1993; Dalton; Rohrschneider 1999).

2001) and social contract (Dimento 2001) analyses, which are receiving renewed attention environmental policy circles.

A second area of convergence in certification programs is that the definitions of sustainable forest management espoused by the various actors seem to have moved in tandem with each other over time. In broad outline, they have moved from a “sustained yield” or “cropping” conception of forestry (in which the goal was to provide a constant and predictable stream of outputs - usually timber), to an ecologically-oriented one (in which the goal was to preserve the structure, function, and composition of forest ecosystems), to one explicitly linking the viability of forests to that of local communities and other social groups that depend on them. This pattern suggests that there is a broad value dialogue in the certification arena. Indeed, much academic work has been devoted to comparisons between the standards of various certification programs, evidently based on the assumption that they can be evaluated according to a common metric (e.g., CEPI 2000; Rametsteiner 2000). Moreover, some researchers argue that certification systems have a built in tendency to compete with each other, thereby “ratcheting up” definitions of best practice (Fung, O’Rourke and Sabel 2001).

Third, the values being promoted are not limited to matters of trees and ecosystems, but also, as in other policy arenas (Walzer 1995), include visions of the “good society.” The guiding principles and formal organization of the Forest Stewardship Council, for example, express a commitment to protecting the viability of forest communities and the health and employment of forest workers. They can be understood as one expression of the vision of “sustainable development” - linking environmental, economic, and social viability - that has grown out of the global discussion of environment and society in recent decades. Conversely, the standards of the AF&PA’s SFI program do not include comparable responsibilities to communities and workers. Rather, they stress the autonomy and economic viability of individual firms, implicitly asserting that the most sustainable system will be the one that retains maximum autonomy for business. The ISO, similarly and more emphatically, makes the firm the center of environmental policy making (see generally, Meidinger 1999). In sum, each certification program encodes and promotes a vision of proper social ordering, and thus seeks to change or reinforce patterns of authority well beyond forestry.

METHODS

Kaldor argues that the modern civil society movement is characterized as much by particular methods of organization and policy making, as by substantive ideals (1999:475-476).²⁴ This

There is a related idea in the traditional corpus of international law, which holds that nation states are under an inherent obligation to the international community (*erga omnes*) not to engage in aggression, genocide, slavery, or racial discrimination - and possibly to safeguard the earth’s ecological balance (Kiss and Shelton 2000:25).

²⁴ With regard to Eastern Europe, Kaldor cites especially a reliance on (1) self-organization, (2) non-violent protest, (3) dialogue, and (4) compromise. While these methods also seem to characterize forest certification, their importance as markers may not be as great as they are in Kaldor’s implicit contrast to state based processes. Defining self-organization in the conventional sense as ‘phenomena which appear to determine their own form

certainly seems to be true for forest certification programs, and probably for a much larger subset of contemporary civil society movements. Of course, the central idea of forest certification is itself an organizational technique involving the application of publicly announced standards to individual forest enterprises by specialized social actors with defined responsibilities, and this technique is being deployed by civil society actors in a number of social sectors beyond forestry (Haufler, 2002; Meidinger 2001b). Beyond the core technique of certification, however, the certification movement can be characterized as an agglomeration of linked methods and techniques that are relied upon to some extent by all forest certification programs.

The first is stakeholder oriented policy making. Individual certification programs vary greatly in the amount and locus of participation, but all require it somewhere and to some extent. The FSC system is by far the most elaborate, with the three-chamber, north-south structure discussed above, along with considerable public input requirements in the regional standard setting processes and individual certifications. Yet, despite its far reaching implementation of stakeholder models, there are places where the FSC system remains strikingly non-participatory and non-transparent, particularly at the level of the individual certification (see Meidinger 1999:160, 179; Rehbinder 2002). The programmatic vision, however, is broader and seems to be moving toward realization.

On the other end of the spectrum is the ISO (ISO 2001) family of processes, including the AF&PA Sustainable Forestry Initiative (AF&PA 2001), all of which require some public comment process, and some of which have occasionally utilized focus groups, but little more. Even in these programs, however, the boundaries are becoming more permeable. Actors outside firms are increasingly likely to be conceptualized as stakeholders. And it usually seems possible, if often difficult and costly, for interested parties to gain at least some input to decision processes. The growing use of stakeholder processes may reflect larger “transnational democratic tendencies” that Falk describes as a “feature of the international legal order at the end of the 20th century” (1997:334). But this assessment remains a bit optimistic at the moment, and much remains to be seen regarding the role of stakeholder processes in certification programs.

A second method common to forest certification programs is a heavy reliance on science and professional expertise, both for defining standards and for legitimating them. The field is at least as powerfully shaped by the professional views of foresters and ecologists as are state-based regulatory systems - perhaps more so. A large part of the debate about

and processes’ (Maturana and Varela 1980), one can look around forest certification arena and describe much of it as self-organized. The Forest Stewardship Council, after all, simply started itself up and declared itself to be in the business of accrediting certifiers and approving certification standards, and did so according to procedures set by itself. People and organizations then proceeded to join and otherwise participate in FSC processes. Similarly, the PanEuropean Forest Certification Council and possibly even the American Forest & Paper Association’s Sustainable Forestry Initiative could be described as self-organized. Yet the programs, particularly the PEFC and SFI, were built in considerable part by pre-existing organizations and interests and based on long-standing views of sustainable forest management. So the question arises, self-organized in relation to what? Depending on one’s perspective, it is possible to portray forest certification either as primarily self-organized or as a natural outgrowth of long-term processes. The same kind of critique applies to the methods of non-violence, dialogue, and compromise. All are common attributes, but only part of the story.

certification standards is framed in scientific terms. For example, the debates about clear felling and chemical use focus heavily on the effects they are predicted to have on forests. Scientists assert a special relationship with the future in making arguments about alternative policies (Sand 2001), and most of the key actors in the field are scientifically trained. At the same time, there seems to be a widely held sense that science cannot fully resolve the questions at stake, and that they will necessarily involve value judgments and the balancing of interests.

It is perhaps not surprising, therefore, that juxtaposed with science and expertise is the third method common to certification programs: use of public relations and marketing techniques. These have included shaming mechanisms such as public protests, picket lines, mock “chain saw massacres” outside retail stores, announcements over store intercoms extolling the store’s record of destroying rain forests, and so on (Bendell and Murphy 2000; Carlton 2000). They have also included standard marketing techniques such as focus group testing, mass media advertisements²⁵ and trade fairs, as well as public commendations, the most important of which is the eco-label itself. The eco-label is intended to signify “good,” “responsible,” “sustainable,” or sometimes even “exemplary” forest management, depending on the program. It is used to mark a product for the public as having environmentally and sometimes socially appropriate origins, a ‘pedigree,’ as it were. Thus, a piece of certified mahogany can be distinguished from an apparently identical piece that might have been produced in violation of a sustainable management plan, environmental laws, native land rights, or worker safety laws, depending on the certification program. The purpose of the label is to enhance access to consumers by sellers of properly produced products while inhibiting access by sellers of improperly produced ones. Similar labeling strategies have appeared in many other sectors, including foods, textiles, and a whole set of “fair trade” products for which primary producers are certified to have been paid a living wage and accorded locally appropriate labor standards (see generally Diller 1999). Labels are becoming so important that the ISO and EU have devoted major efforts to developing guidelines for them (ISO 2001; EOTC 2001), and at least one separate alliance of environmental and social labeling organizations has emerged (ISEAL 2001).

A fourth important organizational methodology is the use of environmental management systems (EMSs) to pursue the objectives of certification programs. The central idea is that each forest management organization should develop a system for considering its environmental impacts, planning which ones to reduce and how, implementing the plan, monitoring its success, and making adjustments over time.²⁶ These processes must be

²⁵ The FSC, for example, has placed advertisements featuring Pierce Brosnan and Olivia Newton-John in *People* and *Playboy* magazines. The AF&PA is planning a major \$25 million ad campaign as this is written (Kim and Carlton 2001).

²⁶ Ironically, as noted in the section on adaptability, environmental management systems seem to constitute the main opportunity for implementing adaptive management in certification programs. The basic idea of adaptive management is that social organizations should consider their goals, plan how to meet them, implement their plans, monitor their performance, reconsider their plans, and make appropriate changes (Lee 1993). At the broader programmatic level, certification systems seem not to have established mechanisms for adaptive management. Although it could turn out that the larger debate about sustainable forest management will play part

formally provided for by the organization, and particular individuals assigned responsibility for carrying them out. The FSC has placed relatively low emphasis on management systems to date, evidently out of a desire not to make it too difficult for small, indigenous, or community based enterprises to attain certification, but other certification programs stress them. Many EMS requirements include a commitment to “continuous improvement” (although there is contention about what must be improved - the management system or organizational performance) and to compliance with applicable laws. Thus, the basic idea of the EMS is to harness the organizational dynamics of the forest management enterprise to the objectives of the certification program. This appears to be a significant organizational innovation, and a very intelligent borrowing by civil society organizations of a market based method.

Fifth, certification programs use formal principles and law-like codes to define their standards and structure their operations. These are exemplified by the FSC’s hierarchical system of principles and criteria, indicators, and national standards, as well as its many statutes, procedural requirements, and the like. (Most of these provisions are available on the FSC website, FSC 2001). For example, FSC Principle 6 provides as follows:

Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest. (FSC 2001)

That principle is then given concrete meaning in regional standards and criteria, such as the following draft criterion from the northeastern region of the US:

Management systems shall promote the development and adoption of environmentally friendly non-chemical methods of pest management and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimize health and environmental risks.

Other than being stricter, this criterion is formally indistinguishable from the regulations promulgated by government environmental regulatory agencies, and there are over a hundred other such criteria for each region. Thus, the reliance on legal forms for managing the FSC program is considerable. Although other forest certification programs tend to be less formally elaborate and specific, all of them appear to be moving in the direction of increased codification. The codes cover the operation of both the certification program and the certified organizations, defining a broad range of roles and responsibilities for the actors. Again, the use of principles and codes is being replicated in many areas of civil society, including human rights, labor standards, and fair trade, not just in the civil society organizations, but also in the firms. There are countless organizations involved in developing codes and implementation systems and in assessing compliance.

of that role, at present certification systems have not made plans for monitoring and revising their own performance.

Finally, forest certification programs increasingly rely on what they define as ‘independent, third-party certifiers’ to assure compliance with their principles, criteria, and standards. Different programs have different ways of accrediting certifiers and defining their independence. Some do not require third-party certification.²⁷ But they all are moving toward the use of third party certifiers, and the underlying principle seems to be gaining ground in the forestry arena. As with the other methods described above, the use of independent certifiers or auditors seems to be gaining ground in other civil society sectors as well.

ROLE IN GLOBAL SOCIETY

The overall picture that emerges is one of forest certification in particular and civil society in general replicating and expanding the kind of regulation often performed by governments, and extending it to a transnational level. In doing this, civil society organizations do not focus on lobbying governmental or inter-governmental agencies; rather, they create their own systems to operate in parallel with governmental ones. They often take a primary role in defining problems, conceptualizing solutions, and shaping public culture, consistent with Finger’s portrayal of international environmental NGOs generally (1994:60), but also go on to establish implementation structures for their programs (Meidinger 1999; Sasser 2002). Of course, the civil society regulatory system’s coverage is spotty and its efficacy untested, but the basic pattern and impulse are evident. The key reasons for the growth of civil society regulation are described in the “facilitating elements” section above: global information technology, global economic integration, and reduced government capacity. Governments have a particularly difficult time establishing regulation at the global level because there are a huge number of factors that can derail negotiations among states when each state must consent to be bound and when there are many issues of contention among the states. Transnational certification programs arguably have a better opportunity because they focus on a narrower range of issues and have fewer veto points.²⁸

Still, the situation is more complicated than forest certification displacing government regulation of transnational problems for efficiency reasons. Rather, certification programs seem to be involved in many complex interactions with government programs. In the first place, certification programs appear to have stimulated increased activity and innovation by government agencies as well, engaging them in sustainable forest management debates and sometimes in mounting their own certification programs. Second, a growing number of governments are subjecting the forests they manage to certification, evidently using the

²⁷ Certification is commonly classified as either first-party (self-certification), second-party (typically a trade association or customer), third-party (a separate certification organization) and even fourth-party (a government or multilateral agency) (Gereffi, Garcia-Johnson, and Sasser 2001).

²⁸ Conversely, Picciotto suggests that they may be at a relative disadvantage because they not have the option of achieving compromise solutions based on trade-offs (1997:1045).

process to improve either the quality or the legitimacy of their management. Thus, certification programs can be seen as regulating both businesses and governments.²⁹

Third, certification programs do not necessarily displace government regulatory programs; rather, they tend to incorporate them and extend them. All certification programs require efforts to comply with applicable government made laws. At least in the near term, therefore, certification programs can be seen as likely to strengthen governmental regulatory programs where they exist, and possibly to lay the groundwork for them where they do not.³⁰ This raises the possibility that forest certification should not be seen so much as a corrective or a challenge to governmental legal systems, but either as an extension and amplification of them or as portents of a more complicated, multi-centered transnational governance system.

CONCLUSION

Overall, the emergence of multiple forest certification programs together with similar developments in other sectors suggests that the global governance system may both be growing in extent and changing in structure. Forest certification and other civil society regulatory programs have brought a significant increase in the number of actors involved in developing and implementing transnational governance institutions. They now operate out of many centers and interact in variable, partially open-ended ways. They have created linkages among more actors, from local to global, north to south, market to state to civil society, than previously was thought possible. They are drawing creatively on organizational methodologies developed for other purposes. And finally, in their effort to establish global standards for environmental and social behavior, they are testing the possibility of creating a global citizenry with shared understandings of public responsibility and accountability. It is impossible to predict the extent to which these efforts will succeed, but it is clear that we stand to learn much from them, and that the stakes are high.

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²⁹ For a conceptual analysis of the various ways in which governmental, business, and non-governmental organizations regulate one another, see Scott 2001. For analyses of the different ways in which certification and government regulatory programs can interact, see Meidinger (2001a) and Wood (2002).

³⁰ This hypothesis raises a set of questions that can be mentioned but not meaningfully addressed in this paper: which governmental regulatory systems will certification further? And to what degree does global forest certification privilege particular concepts of proper forest management, presumptively European and North American ones?

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SECTION VI

LEGAL SYSTEMS

FOREST CERTIFICATION AS ENVIRONMENTAL LAW MAKING BY GLOBAL CIVIL SOCIETY*

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*"Law is that which is boldly asserted and resolutely maintained."*¹

INTRODUCTION

Forest certification programs are schemes methodically crafted by transnational networks of policy actors to define and implement the rules under which forest management enterprises are to operate. They undertake to verify not only that the standards under which certified enterprises operate are appropriate, but also that they are being met. Thus, certification programs take on policymaking and enforcement roles more typically performed by governments. A companion paper (Meidinger 2002) argues that forest certification programs may usefully be understood as an emerging form of governance by 'global civil society,' and seeks to describe key characteristics of global civil society and its governance structures. 'Governance,' however, is generally closely related to law; law making is a typical function of governance systems. Moreover, the methods used by certification programs closely resemble law, since they rely on the public promulgation of generalized rules and the definition of special organizational responsibilities for determining compliance. In this paper, therefore, I take the next step, and argue that forest certification programs may usefully be seen as a form of law making by global civil society. The primary advantage of this strategy is that it makes available to discussions of forest certification the experience and analytical methods of legal and socio-legal analysis. This should enrich forest certification, and help its

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¹ This aphorism was attributed to the late United States Supreme Court Justice, Louis Brandeis, by one of his former law clerks, Nathaniel L. Nathanson, as recounted to my Constitutional Law class at Northwestern University Law School in February of 1975.

proponents to scrutinize assumptions that heretofore have been taken for granted but have the capacity over time to seriously undermine their programs.

The paper proceeds as follows. The next two subsections offer brief descriptions of my methodology and perspective. The following section provides a general overview of the historical relationship between law and civil society. It argues that civil society has long been an important source of law, and that our tendency to equate law with the state is not only a very recent prejudice, but also one that significantly misconstrues the genesis of state law in the present era. The next section lays the foundation for understanding how forest certification may articulate with the existing environmental law system by providing brief historical overviews of national and international environmental law. These are based largely on Anglo-American law, but are sufficiently general to be suggestive for other western legal systems as well. The final section of the paper brings some of the experience of legal scholarship to bear on forest certification. It argues among other things that it would behoove certification programs to become more sophisticated about the challenges of enforcing rules effectively, the need to learn and adapt based on experience, the difficulties of achieving consistency across highly varied situations, and the general challenges of attaining legitimacy. Although this paper touches briefly on what is perhaps the greatest normative problem for forest certification, its relationship to democracy, that problem is left largely for a later paper.

PERSPECTIVE

Most people who become involved with emerging, politically contentious fields such as forest certification have an agenda. Mine is largely that of an academic researcher. I have long been interested in two fundamental questions of institutional sociology:

1. How are social rules and standards made?
2. How are they institutionalized in social behavior?

I find the field of forest certification movement to be a fascinating and potentially important arena for studying these questions because it may be one of the leading edges of emerging institutions for making and enforcing rules on a global scale.

At the same time, my interest as a researcher is not merely academic. One of my goals is to help understand how to build social institutions that promote environmental stewardship and social justice. This paper and its companion attempt to do so by clarifying some of the relationships between forest certification and global civil society, and by bringing some of the experience with governmental regulatory and legal institutions into the forest certification debate, which thus far has tended to be limited to foresters and environmentalists who think all they are doing is trying to promote sustainable forest management.

METHOD

Like its companion, this paper is best seen as an exercise in imaginative social theory. It takes two general, contested, and 'under construction' concepts - global civil society and environmental law and - and seeks to situate forest certification in terms of them. It subjects the hypothesis that forest certification is an emergent form of environmental law (initially developed in Meidinger 1999 and 2001a), to a mutual-illumination strategy, using environmental and other legal scholarship to examine forest certification and also using forest certification scholarship to reflect back on law. The overall goal is to paint a picture in which we can view forest certification in the context of larger institutional developments, both indicating where environmental law may be headed and how forest certification may have to adapt to meet the challenges of global environmental law.

This methodological strategy is subject to important limitations. Most importantly, it entails a significant degree of arbitrariness. Another scholar following a similar method could focus on different factors within the field of study and perhaps reach quite different conclusions. This limitation is mitigated considerably, however, by the fact that this paper will be part of a larger discussion of forest certification, global governance, and environmental law. It is likely to be complemented and challenged by other works, and its arguments will be grist for their mill.

LAW AND CIVIL SOCIETY

DOMESTIC

The relationship of law to civil society has usually been either ambiguous or contested. The Greeks and Romans took the rule of law to be essential to civil society, but had a multitude of theories about the source of law. During the feudal period, the guilds and other urban corporate bodies that gave rise to civil society played a large role in making and enforcing rules. As the nation states solidified their authority and created separate forums for authoritative law making, they generally endorsed and adopted guild and community made rules, but also gradually revised them to provide interregional consistency, pursue their own goals, and accommodate new conditions (Poggi 1978:78-79). Concurrently, the nation states asserted a monopoly on the authority to make binding laws. Legal theorists assisted that effort by developing a supporting rationale, systematizing law at the level of the nation state (particularly in civil law countries) and establishing elite 'national' law schools.

Since the late 18th century, the assumption that law necessarily emanates from a sovereign state has become deeply embedded in both Civil and Anglo-American legal thought. Accordingly, it is not surprising that modern commentators often take as given that the law of civil society is made by nation states, and that nation states must be urged by civil society actors - petitioned by them - to make laws supporting civil society in the first place and to implement civil society agendas in the second (e.g., Mertus 1999:1338-1339; Etzioni 2000:356-357).

In practice, however, the situation has always been more complex. Continental legal scholars, such as Ehrlich (1913) and Heller (1996, orig. 1933), pointed out that law must take on meaning from the context in which it is implemented; people give meaning to legal terms by the inevitably variable ways in which they live and organize themselves to implement them. Heller explained this difficult argument as follows: “The very same general court structure proclaimed by Josef II would lead in Austria to a written and mediated court procedure, but in the Netherlands to an oral and immediate one” (1996:1191). Thus, civil society necessarily has a role in ‘making’ law, even when the official source of law is the state. Weber (1922) took the argument a major step further by arguing that law means little unless it is accorded legitimacy by society, and that it must therefore be made with the goal of legitimacy in mind. Thus again, actors outside the state necessarily shape the law given to them by the state because the state must tailor it to gain their acquiescence.

Although Anglo American systems never adopted the positivist view as completely as the civil law systems, their courts, legislatures and administrative agencies came over time to be seen as the exclusive sources of law. The American legal realists of the 1920s-1950s, however, countered by arguing that much law was in fact made outside government bodies. For example, a contract between employer and employee was legally binding and enforceable by government agencies without significant government input as to its terms. The parties therefore could be seen as defining the substantive content of law, and hence as exercising delegated state power. Not only that, but the terms of the contract would very likely reflect pre-existing social or economic relationships in society (Hale 1920). Thus in reality, the authors of the law would not be the individual contractors so much as the system of social relationships in which they operated - in effect civil society in many cases.

Karl Llewellyn and others extended this insight by arguing that judges and legislators should adjudicate and legislate based on empirical information on the social practices to which the law applies. A commercial code, for example, should be based on the practice and context of real-world commercial transactions, rather than on abstract principles. The same would be true of laws governing non profit organizations such as unions, religious organizations, and so on - thus allowing civil society to “author” general rules of law. In addition, particular legal documents should be interpreted in terms of the “usage in trade” providing the context for the transaction to which they apply, which the parties could be presumed to have presupposed in their bargaining (Llewellyn 1960). In sum, continental and Anglo-American legal scholars laid strong conceptual foundations for a revitalized understanding of civil society’s role of in law making during the first half of the 20th century.

One might expect that the rapid growth of the empirical social sciences in the second half of the 20th century would stimulate much further progress in clarifying the relationship between civil society and law. That does not seem to have been the case, however. Although the reasons go well beyond the scope of this paper, two are relevant to this analysis. First, most members of what came to be called the “law and society movement” have been unwilling to focus on defining which social phenomena count as law and which do not. This posture seems to reflect a sense that pursuing such a question is likely to lead into an infinite regress of formalist jurisprudential arguments that simply recapitulate their premises. Moreover, many law and society scholars seem to have assumed that what counts as law is

an empirical question, although this assumption is conceptually problematic and accepted methods for addressing it have never been developed.

Second, law and society researchers have typically drawn upon established social science disciplines and sought to explain legal phenomena in terms of variables central to those disciplines. To a great extent this has meant viewing the work of courts, administrative agencies, and legislatures as products of economic interests, political power, social class, cognitive assumptions, and the like. Efforts to bring these variables together in a "legal system" conception might well have included a component with civil society as a law-maker, but by and large they have not (e.g., Friedman 1978, Chaps. 1, 6). Law and society scholars nudged toward that possibility by developing the concepts of formal and informal legal systems (e.g., Schwartz, 1954) and law-in-the-books versus law-in-action (e.g., Abel 1973). But they pulled back from the potential implications of these ideas with regard to modern societies. On one hand, informal law making was seen largely as a phenomenon of "traditional" rather than "modern" societies, and often as a matter of "normative," rather than truly legal ordering. Thus it is not surprising that today a separate "law and norms" movement has emerged, which blithely assumes that norms are distinct from law, and then expresses collective amazement at the importance of norms in ordering social life (e.g., Posner 2000).

Law-in-action studies, on the other hand, have concentrated almost entirely on the way law is made and applied by governmental bodies. Thus, law and society scholars have focused on the outputs of national and local governments, judges and legislators. Whether the research is on disputing, the legal profession, legal agencies, or even legal theory, most research seen as central to the field (see, for example, the studies cited in Munger 1997) has as its endpoint and taken-for-granted analytical filter government legal institutions, thus neglecting the potential law making operations of civil society institutions.

Still, there exist several strands of socio-legal research that have focused to some extent on civil society relationships. Perhaps the best known is research on how people understand and incorporate (or ignore) law in their everyday lives (e.g., Greenhouse, et al. 1994, Sarat and Kearns 1993). For the most part, however, work in this tradition has not critiqued the assumption that law is made up of the rules and acts of the governmental agencies. Rather, it has focused on the distance between government and civil society, and the nature of interactions between them.

A second school of thought has explicitly rejected the assumption that law is necessarily associated with government agencies, and sought instead to bring into the ambit of law the full set of social institutions that define and enforce social rights and duties. In his study of industrial relations, for example, Philip Selznick (1969), built on the post-realist work of Lon Fuller (1964) and H.L.A. Hart (1964) to describe important law making processes in non-governmental organizations such as arbitration associations and universities. While widely admired, however, this and related work (e.g., Galanter 1981) seems to have had little effective impact on the state-centric understanding of law held by

most empirical researchers, legal scholars and practitioners.² The same seems to be true of “legal system” approaches developed in the past few decades by German theorists such as Luhmann (1985) and Teubner (1997a and b). Although they have sought to locate the essence of law in the capacity of social institutions to declare certain types of acts acceptable or unacceptable, their impacts on scholarship and practice to date appear to be very limited.³ It is possible, however, that the currently marginal schools of thought represented by Selznick and Luhmann will receive a strong push toward the center of legal scholarship by the recent and rapid development of global law making institutions that are not reducible to government agencies.

GLOBAL

With the 1648 Treaty of Westphalia, the global legal arena officially became the “inter-national” legal arena - meaning that it was constituted solely by, for, and of nation states. Enacting a vision worked out by Hugo Grotius (1625) and others in the preceding decades, the nation states constituted themselves as independent, equal, and exclusive legal actors in the international arena. Each was free to make laws governing its citizens, lands, and other assets. Any law applicable across or beyond the jurisdictions of nation states had to be made by the nation states affected, either by treaty or by some other mutually recognized process. Any law imposing an obligation on a state had to rest on a formal expression of consent by that state (Falk 1997:337).

The Westphalian legal system has long been under pressure for reasons too numerous to discuss here. The factors driving globalization described in the companion paper (Meidigner 2002) are among the most important. International trade in particular has created huge challenges for state-based conceptions of law. The drive to simplify and promote trade has been an important factor in the rise of the European community and its establishment of institutions that are not explicable merely as agreements among states (e.g., Joerges 2001).

International trade also has driven the growth of legal institutions more self-consciously distinct from states. Since an interstate transaction crosses jurisdictions, it could conceivably be governed by the law of either jurisdiction, and international traders have gone to enormous lengths to attempt to choose the law applicable to their transactions. In general, each trader is likely to have an aversion to submitting to the legal system of the other trader. It did not take traders long to realize that there might be advantages in being governed by law from still other jurisdictions, or even in making their own law and using arbitrators to enforce it, and they took steps to do both. Gradually a distinctive set of rules and institutions for dealing with transnational commercial transactions has arisen - *lex mercatoria*, the “law merchant.”

² Ironically, one of the major studies of non-governmental regulation, Cheit 1990, originally done as a Berkeley doctoral dissertation, does not explicitly build on Selznick’s insights.

³ For an early effort to apply the perspective of Luhmann and Teubner to forest certification, see Lawson and Cashore (n.d.) For a particularly clear and careful exposition of Luhmannian legal theory, see Ziegert (forthcoming).

Although a tremendous amount of ink has been spilled debating the status and content of *lex mercatoria*, the present discussion can be limited to two basic points. First, a large number of problems regarding international commercial transactions are in fact settled through the *lex mercatoria* system (e.g., Dezalay and Garth 1996). Second, the system is not reducible to the law of states or to laws made by combinations of states. This is so even though many state legal systems are committed by treaty to enforce the judgments of non-state *lex mercatoria* arbitration panels.⁴ The obvious next question is whether *lex mercatoria* should be treated as law or as something else. This is a question which I may yet write about in detail, but not here. For now it suffices to say that the benefits of holding off with thinking about phenomena such as *lex mercatoria* as law until all of the traditional elements (e.g., a widely recognized coercive mechanism) are clearly present are far outweighed by the costs. To hold back, or to argue about definitions, is to forego the opportunity to carry out research and analysis on non-governmental law making while it is happening, a high cost indeed. Moreover, it is to deprive civil society institution building processes such as forest certification of the full experience and scrutiny of legal and socio-legal research, a problem regardless of whether one is a supporter or a critic (Spiro 1996). For now, therefore, I think it appropriate to treat Teubner's bold statement as probably accurate and work from that basis.

[G]lobalization of law creates a multitude of decentered law-making processes in various sectors of civil society, independently of nation-states. Technical standardization, professional rule production, human rights, intra-organizational regulation in multinational enterprises, contracting, arbitration and other institutions of *lex mercatoria* are forms of rule making by 'private governments' which have appeared on a massive global scale. They claim worldwide validity independently of the law of nation-states and in relative distance to the rules of international public law. They have come into existence not by formal acts of nation-states but by strange paradoxical acts of self-validation (1997b:xii).

BASIC CONCEPTUAL PERSPECTIVES

Before proceeding, it is appropriate to note that there seem to be two basic approaches to the decision to treat *lex mercatoria* and other forms of non-governmental regulation as law, which can be characterized loosely as internal and external. Internal perspectives focus on the nature of the system that produces the phenomenon at issue. There are several main variants. One focuses on the institutions involved in the system. The traditional legal positivist perspective, for example, generally requires that for law to exist an agency of a nation state must formulate an order that it is prepared to enforce with coercion (Austin 1832). The focus on the nation state is limited to a particular historical period, however, and

⁴ Under the New York Convention of 1958 over 120 countries have committed to enforce arbitral awards where such awards are based on written contracts to subject commercial disputes to arbitration and to abide by the decisions (McConaughay 2001:611).

there is no good reason to presume that law did not exist prior to the nation state. Thus, there is no inherent reason the list of relevant institutional sources cannot be enlarged. One could conceivably include some or many of the “civil society” organizations described above in the legal system.

A second variant of the internalist perspective focuses on characteristic functioning and products of the system. This is the strategy of Luhmann (1985; Ziegert forthcoming) and Teubner (1997b:14), which focuses on social communication processes that produce “binary coding” - e.g, legal/illegal. Since the judgment could as well be sustainable/unsustainable, it seems plausible to treat forest certification as a form of law making. The only limitation in principle is the occasional timidity of the certification systems in holding back from using strong and definite labels.

The externalist approach to defining law looks at how it is received and used in the larger society. This is the approach suggested by Weber’s concept of legitimacy. Falk and Strauss build upon it by emphasizing a public expectation that people will conform to a rule, and the “pull toward compliance” exerted by the rule (2000:207, following Franck 1990). It is the force of public justice referred to by Professors Mohawk and Lyons in the mid-1980s discussion described in the companion paper. Legitimacy is a difficult criterion to apply in practice, since different people could disagree on whether such an expectation of and pull toward compliance exist in a particular cases, but it refers to a very important aspect of law which it would be hard to justify ignoring, as is discussed further in the concluding section of this paper.

A second externalist strategy is to look at how society uses organizations in a given social field to make and enforce rules. This is the method used by Dezalay and Garth (1995 and 1996) in their study of the growth of an arbitration system for resolving transnational commercial disputes.⁵ Their distinctive contribution is to describe in detail how transnational enterprises use dispute resolution services and how potential arbitrators and arbitration alliances build institutions to compete for business in the field. In the course of that competition they shape the overall transnational commercial arbitration system in ways that suit their interests and those of the commercial transactions system. It seems likely that a similar approach could be used to describe the field of forest certification, wherein programs compete for influence and legitimacy, and in the course of that competition shape the overall law and policy of forest certification.⁶

In sum, if one takes the criteria discussed above - institutional rule-making and adjudication mechanisms, public legitimacy, and social usage - there is a good, although not incontrovertible case for treating forest certification as a form of law making, specifically of environmental law making. The next question is what this choice gains us. Before addressing it a brief overview of environmental law will be helpful.

⁵ Examples of other scholars following this general approach include Braithwaite and Drahos (2000), Spiro (1996), Wapner (1996).

⁶ The key here is that the competition is not limited to a competition for business, but is also a competition to establish a legal order that will support that business. At the same time, contrary to the way many economists and some institutionalists conceive law, the legal order is not really fixed, but rather dynamic and subject to constant competition (Dezalay and Garth 1996:16).

ENVIRONMENTAL LAW AND CIVIL SOCIETY

DOMESTIC

If forest certification is a kind of law making, it is probably a kind of environmental law making. To see how it fits and potentially changes the structure of environmental law, it is necessary to have a working overview of the field. Although I cannot possibly survey environmental law around the globe, this section begins by providing an overview of environmental law development in the Anglo-American system.

Environmental law can be generally defined as the law governing the relationships of humans to the biophysical environment.⁷ As with law in general, environmental law can be helpfully conceptualized in terms of three basic forms or phases. At the same time, it is important to understand that the phases are not completely distinct, and that elements of each phase can be found in the others (e.g., Westbrook 1994).

Phase 1

Before the 19th century, most environmental law appears to have been made in civil society. It typically took the form of either generally accepted customs or rules developed by assemblies of appropriate estate holders or other interested members of society. There is little published research on this phase of environmental law, most likely because many scholars uncritically think of environmental law as a product of the 19th century, when the control of industrial discharges came to be widely seen as necessary. My exploratory review of early English legal history, however, has found a great deal of environmental regulation in the medieval period. Typical laws covered how many sheep and cattle could be grazed, where and when, how water runoff must be managed, how land fertility was to be preserved, and so on.

The details of these regulations and how they were worked out are well beyond the scope of this paper, but it is helpful to describe a few typical institutional practices. First, although environmental laws usually were not voted upon nor based upon a principle of political equality, they were generally discussed quite thoroughly in village, town, or manorial assemblies. Most interested farmers and villagers probably had a 'voice' and would be heard in those assemblies. At the same time, the views of certain 'men of substance' (not necessarily free holders) generally counted most, and the resulting bylaws tended to reflect the interests of the better off community members (Ault 1965:42). It is also apparent that in most cases regulations were not simply dictated or imposed by officials. Whether or not the lord of the manor could in principle set the rules under which the manor and village operated, it is clear that he did not do so for most natural resource and environmental

⁷ There are risks to such a broad definition, primarily of taking in such a huge and unwieldy area that it resists meaningful conceptualization. The recent histories of the subfields, however, indicate a need to deal with interconnections among them. Protecting an endangered arctic species, for example, may require controlling land

regulations. These were more typically worked out by concerned groups of citizens and then sometimes ratified by the lord. Depending on the village of origin environmental laws might be described as ordained “by the whole homage and by the freemen” “by the whole township”, “by the community of the town”, “by the lord and the community of the town”, “by the whole homage of the town”, “by the lord and his tenants”, “by all the tenants, free and customary”, or “by the assent of all the homage” (Ault 1965:41).

Over time, the rules and policies thus worked out in customary social institutions were gradually incorporated into definitions of property rights, primarily through real property, servitude,⁸ and nuisance doctrines. This was done first by local courts and eventually by the royal courts and other agents of the crown, thus mirroring the general processes for incorporating guild-made rules into governmental law discussed above. As the origins of the property based environmental regulations receded into history, they may have begun to appear as if they had been created and imposed by the state in the first place. At the same time, however, the conflicts created by rapid urbanization and industrialization in the late 18th and throughout the 19th century created new conflicts that were difficult to handle in terms of received property rights. In trying to resolve them courts increasingly asked whether contested land uses were ‘nuisances’. Traditional nuisance doctrine typically asked whether a specific resource use fit or was appropriate in a given place, thus again implicitly ratifying received civil society arrangements. But the static and yet somewhat unpredictable implications of such an approach brought increasing pressures on the courts to rationalize and universalize their decisions. Thus courts came to define the central question as whether a land use was “unreasonable” under the circumstances. This question invited judges to determine the proper use of land in a changing society, and perhaps even to balance the relative costs and benefits of alternative land uses. At the same time, such questions were being taken up by legislative bodies, and sometimes by newly established administrative agencies as well, thus inaugurating institutional structures characteristic of Phase 2.

Phase 2

Although the “modern” era of environmental law often is portrayed as starting in the late 1960s or early 1970s, its institutional roots go back a hundred years earlier. By the end of the 19th century, legislatures and administrative agencies were beginning to address environmental issues, promulgating a miscellany of laws directed at air and water pollution, as well as wildlife and forest destruction, and typically assigning their enforcement to administrative agencies attributed with expertise in handling such problems.⁹ In some countries this was done primarily at the local or provincial level, in others at the national

use in North America as well as the use of organic pesticides in the tropics. Accordingly, it seems unlikely that a narrower definition of the field would be fruitful in either the near or the long term.

⁸ The term “servitude” is used here to include uses and constraints on property use that often are separately categorized as easements, covenants, and equitable servitudes in Anglo-American law.

⁹ There were striking and important precedents, of course. In England, for example, a 1388 Parliamentary statute forbade the deposit of “Dung and Filth of the Garbage and Intraills as well as of Beasts killed, as of other Corruptions ... in Ditches, Rivers, and other Waters”, and required anyone who had made such deposits to remove them or be fined. It also provided for citizen enforcement of the law. Statute of 12 Rich. II. Ch.13 (1388).

level.¹⁰ On the whole, these laws appear to have been relatively ineffectual for a half century or more, due primarily to weak scientific foundations, relentless industrialization, and lackadaisical enforcement reflecting preferences in most jurisdictions for economic growth over environmental protection (e.g., Laitos 1980). After World War II the situation slowly began to change, as the impacts of industrial pollution became more widespread and better understood (e.g., Ashby and Anderson 1981).

By the 1970s and 1980s most industrialized countries had established extensive statutory and administrative systems to protect air, water, land, and biodiversity. The systems are so extensive, and grow so steadily, that they are extremely difficult to understand or conceptualize. They range across an enormous array of subjects, running from nuclear power to endangered species, from historic preservation to genetically modified organisms, and on and on (e.g., Plater 1999). They typically involve great technological and scientific complexity, and face enormous uncertainty. They almost always encounter unanticipated interconnections and problems. Finally, they often involve difficult normative choices that can trigger or exacerbate social conflict. In sum, they require combining sophisticated political processes with sophisticated scientific ones. Not surprisingly, the challenges of making and revising environmental law can be staggering.

The complex of institutional methods primarily relied upon by government legal systems to meet these challenges in Phase 2 is often derisively and somewhat unfairly called “command-and-control” regulation. Because this form of environmental law has been so exhaustively studied and described as to be generally familiar to most readers, I will only note its most basic institutional characteristics here. Phase 2 regulation places enormous reliance in administrative agencies directed to focus their attention on particular types of problems - e.g., air or pollution. The agencies are legitimated primarily by their claims to technical expertise, but over time have also increasingly deployed consultative methods for developing and implementing policies. The core regulatory mechanism of Phase 2 environmental law is the requirement that categories of polluters and other natural resource users keep their environmental impacts at levels which would result from application of the strictest feasible technological methods to their production processes. Thus, although they usually do not require the actual use of a specific technology, these requirements are typically referred to by names such as “best available control technology” and “best management practices”. The standards are generally defined by administrative agencies for specific industries through rulemaking and adjudication processes. They often are set with little regard to collateral environmental issues, such as waste production or consumption of scarce resources. Pre-existing plants and activities generally are treated more leniently than proposed ones. Actual implementation of standards varies considerably among jurisdictions, both within and among countries. The costs and levels of protection thus also vary among both firms and sectors. Like any important institutional synthesis, Phase 2 has given rise to a set of institutional antitheses in Phase 3.

¹⁰ Formally, the level made little difference because local and provincial governments by this time were defined as creatures of the state. (Dillon 1911)

Phase 3

Phase 3 consists of a number of loosely related reform initiatives, including market mechanisms, information disclosure requirements, flexible permitting programs, regulatory negotiation, ecosystem management, place-based collaborative management initiatives, voluntary agreements, good neighbor agreements, and environmental certification programs. Many grow out of critiques of Phase 2 regulation, although some go back farther. Overlaid on Phase 2 regulation, the overall picture constituted by these initiatives suggests that environmental law is in considerable flux, and may be quite hospitable to the emergence of civil society regulatory initiatives such as forest certification.

Market Mechanisms effectively attach prices to environmentally damaging activities and allow firms to reduce the damage if doing so is cost-effective, or to pay others or pay taxes if the costs of reduction are higher than the payments or taxes. Market mechanisms are a response to the most influential critique of traditional regulation, which holds that it is needlessly inefficient, costing more than necessary to achieve a given level of social benefits. This is because control technology standards are based on feasibility for general categories of polluters, rather than on individually tailored cost-benefit criteria. Thus, one firm or sector can be required to incur significantly higher costs than another to obtain any given level social benefits.¹¹ Market mechanisms seek to obtain environmental benefits where they are least costly, and thus to minimize the total costs to society of environmental protection.

Although the practical role of market mechanisms remains limited, it has been expanding for over two decades. At the formal level, agencies have developed a number of programs, such as the “offsetting”, “bubbling” and acid rain trading programs in United States air pollution regulation. At the informal level, too, regulatory officials appear to allow a certain amount of “bubbling” in individual pollution permits, even when statutes and rules do not provide for it. Market mechanisms are regularly extended into new regulatory territory. The State of California, for example, recently established an “endangered species mitigation bank”, whereby landowners can earn “conservation credits” by taking steps to permanently protect endangered species on one site and can then sell their credits to developers seeking to carry out projects that might harm those species on other sites (Bean and Dwyer 2000).

Information Disclosure Requirements also appear to be expanding steadily in environmental law. The basic strategy is to require firms that handle dangerous substances or engage in other potentially harmful activities to publicly disclose those activities. The

¹¹ On the benefit side, the argument was also made that uniform standards among jurisdictions are undesirable, because the benefits will vary greatly depending on population density, concentration of pollution sources, natural conditions, and so on. (Krier and Ursin 1978)

Two other important initiatives also respond in large part to this critique. The first is to document means-ends, or cause-effect relationships between regulatory strategies and environmental goals. This of course requires a significant expansion in the quality of scientific information and models. A second and related initiative is to undertake comparative risk assessment of environmental regulation, so that resources and costs will be focused on the most risky activities. This is a very difficult undertaking making huge demands on science. The available scientific information and models are flexible enough that huge disagreements persist about the comparative risks of various activities.

paradigmatic example is the United States “Community Right to Know” law, which requires that anyone who stores or discharges more than set amounts of any of a list of approximately 600 toxic chemicals to the air, land, or water must publicly disclose the types and amounts of chemicals involved. This must be done regardless of whether the activities are legal or illegal, regulated or unregulated. Since its passage in 1987, the law appears to have had a large effect on the discharge of hazardous chemicals, possibly reducing them by over one-third (e.g., Karkkainen 2001; TRI 2001).¹² This kind of “transparency” strategy is not cost-free, but is significantly less costly than traditional regulatory standard setting. Some scholars view the emergence of information disclosure requirements as a major step toward “reflexive” environmental law designed to make actors reflect upon the consequences of their acts and adjust to make them socially acceptable (e.g., Orts 1995). Others find them to constitute a major expansion in the ability of wider communities to monitor and set benchmarks for the performance of corporations (e.g., Karkkainen 2001).¹³ State imposed disclosure requirements can thus be seen as valuable resources for civil society regulatory institutions.

Flexible Permitting Programs allow firms to avoid specific regulatory requirements in return for showing that they can provide equal or greater environmental benefits by other, presumably less costly means. Flexible permitting programs respond to some of the same critiques of command-and-control regulation as market mechanisms, but give the regulatory agency a more direct role in the decisional processes. Examples include “Project XL” in the United States and the Eco-Management and Auditing Scheme (“EMAS”)¹⁴ in the European Union. Rather than simply creating legally protected interests that can be traded, the government agency creates a framework in which firm are invited to be innovative to the benefit of the public, subject to some sort of check and ratification by the administrative agency.

The record of flexible permitting processes is unclear at this stage. In the U.S., flexible permitting seems to have fallen short of expectations, creating just about as many procedural hurdles and business costs as it eliminated (EPA 2001) and stimulating relatively little environmental improvement. Recently, however, the EPA has established a new, ostensibly improved program called Performance Track, which relies more heavily on environmental management systems and non-governmental environmental certification programs such as ISO 14001 (EPA 2001). EMAS, which also includes a substantial EMS component,¹⁵ seems

¹² Mazurek (1999) suggests, however, that some of these effects may be artifacts of tendencies by transnational companies to relocate polluting activities to jurisdictions lacking comparable disclosure laws or to outsource them to small companies that fall beneath threshold reporting requirements.

¹³ At the same time, it is important to note that modern environmental systems still face severe and possibly increasing information disparities. Thus while it is true that the amount of public information seems to be growing absolutely in most industrial societies, the amount of private information, much of it given proprietary protection, may be growing even more quickly.

¹⁴ EEC Council Regulation 1836/93 (authorizing voluntary participation by industrial firms in a community eco-management and audit scheme) 1993 O. J. (L 168) 1. The primary benefits of EMAS participation for companies appear to be extended time frames for regulatory compliance and reduced penalties for non-compliance.

¹⁵ Each company participating in the EMAS program prepares an environmental management system incorporating several principles, including pollution prevention and source reduction. The environmental management system

to be viewed as more of a success in Europe, although it too has fallen short of expectations. Nonetheless, these programs persist and seem to be growing, as agencies work to improve them in successive iterations.

Regulatory Negotiation (“reg-neg”) is a rulemaking process in which a government regulatory agency organizes a stakeholder group and commissions it to draft a proposed rule addressing a specific problem. The stakeholder group is supposed to represent all important affected groups, to be willing to bargain in good faith, and to seek consensus. Agencies are advised to use this method for problems that are not likely to be highly contentious, nor require participants to compromise their fundamental commitments (ACUS 1990:38). When the regulatory negotiation process is complete the agency subjects the proposed rule to a slightly streamlined version of its traditional rule making processes, but remains responsible for the ultimate content of the rule.

Reg-Neg processes have been used in a large number of U.S. environmental rulemakings since the mid-1980s, although impressionistic evidence suggests that their popularity in the United States may have leveled off recently. Evaluations of the process are contentious. Some commentators argue that reg-neg has provided for a forum in which regulatory problems are effectively redefined, innovative solutions found, and new institutions developed (Freeman 1997). Others assert that they have not reduced regulatory costs, conflict, or litigation (Coglianese 1997), and have dangerously transferred regulatory power to private interests, a form of “capture” (Funk 1997).

Ecosystem Management seeks to integrate the many environmental and social interconnections implicated in all significant environmental management decisions. Its goal is to correct for the shortcomings of single-purpose and single-technique environmental actors, both private and public. Ecosystem management attempts to do this by locating all significant actors and their activities in a broad scale ecological framework and addressing the complex ecological and social interactions among them. Often it also seeks to link “environmental” issues to social and economic ones such as community maintenance and job creation, thus partaking in the post-Rio ‘sustainable development’ framework. In doing so, most ecosystem management initiatives attempt to combine a comprehensive analytical methodology with broad stakeholder collaboration. An important driver of ecosystem management is the recognition that the fragmentation of jurisdiction over the natural environment among many governments and property holders leaves none of them in a position to achieve integrated management on its own. Integrated, ongoing stakeholder collaboration is necessary to make, assess, and revise environmental policy (Meidinger 1997).

Ecosystem management has been a “top-down” strategy on the whole, conceived primarily by ecologists and centralized government agencies and NGOs. At the same time,

must include: (a) specific definitions of management responsibilities in the company for environment matters; (b) a register summarizing the effects that the company’s operations on the environment; (c) environmental record keeping and reporting procedures; (d) a public environmental statement listing significant environmental issues and emissions; and (e) periodic audits of the company’s management system, with verification of the audits by an external auditor. Participating companies have the right to register with their national governments and to be included in a list of EMAS companies published in the Official Journal of the European Union. The companies are also permitted to advertise publicly their participation in the program (*id.*).

governments and government agencies are often only one or two members of the broader group of stakeholders, although they sometimes play a controlling role. To date, the legal framework for ecosystem management appears to consist primarily of memoranda of understanding among units of government and contractual agreements among government agencies and landholders. Ecosystem management proponents in the United States have generally not sought amendments or new authority in statutes (Interagency Task Force 1995), evidently out of a fear of “opening up” environmental statutes to the risk of weakening amendments.

Place-Based Collaborative Management Initiatives are closely related to ecosystem management ones, but have typically been more bottom-up, self-organized processes. They are often established on a “watershed” basis, on the underlying theory that actors in a watershed are mutually dependent upon each other, and would be well advised to work out mutually acceptable understandings of proper environmental management. The watershed frame also provides a basis for deciding who the participants should be. The specific foci of place-based groups vary with the environmental management issues relevant to the particular place. They often involve water quality, fisheries, and forest management, although the scope of issues can expand beyond traditional environmental ones to include social and economic ones. The United States EPA estimates that there are currently over 3000 local watershed management groups in the United States (Lewicki 2001).

Some place-based groups have evolved very definite structures of rights and responsibilities, enforceable through legal or informal sanctions (e.g., Pinkerton and Weinstein 1995) whereas others have much looser, more fluid arrangements in which members come and go (Nickelsberg 1998). Again, government bodies sometimes participate in place-based management initiatives, but more as stakeholders than as sovereigns. In recent years governments seem increasingly inclined to take steps to facilitate place based management processes, thus giving them some “top-down” impetus as well. In the US, for example, the EPA has encouraged states to set up watershed management groups to set and allocate “total maximum daily loads” of pollution for particular watersheds under the Clean Water Act (Houck 1999).

Voluntary Agreements typically are “one-shot” deals negotiated between government agencies and firms in which the firms commit to improving their environmental performance beyond what is required under existing law. They differ from flexible permits in that there is no pre-defined framework in which they are worked out, and they are therefore difficult to incorporate systematically in environmental law (Murswiek 2001). Voluntary agreements are extremely common in Japan, and quite common in some European countries (Carraro and Leveque 1999). They can be negotiated at the national, regional, or local level. Although local governments seem particularly vulnerable to informational and negotiating inequalities in relation to firms, there are good arguments that voluntary agreements allow governments to achieve higher levels of environmental protection than they otherwise would (Rehbinder 1994; Carraro and Leveque 1999).

“Good Neighbor Agreements” are somewhat like traditional voluntary agreements, but are negotiated between firms and community groups or other civil society organizations, rather than between firms and governments (Olsen 1991). It is impossible to say how many

exist, but they seem to be multiplying rapidly, facilitated to some extent by the public information, participation, and review requirements of government regulatory programs. Good neighbor agreements often are very sophisticated arrangements, approximating or exceeding the detail and coverage of permit documents prepared by regulatory agencies (e.g., Stillwater Mine 2000). They generally seek to achieve environmental performance superior to that government agencies are able to require, and largely cut government out of the deal, leaving it only as a background player. Contract law and private land use agreements often are used to help assure compliance.

Environmental Certification Programs provide frameworks in which firms can be certified as practicing good environmental management. Some, such as the chemical industry's "Responsible Care" program (Gunningham 1995) and the United States forest product industry's Sustainable Forestry Initiative, are run by industry trade associations. Others, such as the ISO 14001 program, are run by inter-sectoral industry-based groups, some of which are government sanctioned. Still others, such as the Forest Stewardship Council, are established by NGO-based groups. Depending on the program, firms are entitled to signal their certification status by displaying labels on their literature, facilities, or products. ISO-type programs focus on the implementation of sophisticated environmental management systems ("EMS"s) by firms (Coglianese and Nash 2001), while FSC-type programs focus on performance requirements. The performance requirements almost always include traditional pollution and biodiversity concerns, but some are now extending to include economic, community, and labor ones as well.

Summary. Taken together, the above-described initiatives indicate great churning in the field of environmental law. Most of them expand the role of civil society organizations in domestic environmental law. For the most part, civil society institutions do not seem to displace government ones, but rather enter open ended cooperative and partnership relationships with them (cf, Freeman 2000; Meidinger 2001a; Wood, forthcoming).¹⁶ Government agencies generally remain dominant, but rely heavily on extra-governmental processes and relationships, and often operate in horizontal rather than vertical relationships with them. Although it is difficult to generalize about such a diverse set of initiatives, it seems safe to predict that they will lead to increased incorporation of civil society norms and institutions into governmental regulation, making it all the more important to monitor civil society institutions. It also seems possible that the new initiatives portend fundamentally more complex and contentious legal processes, as the roles and responsibilities of various governmental and nongovernmental actors overlap and blur. These problems seem especially likely if the tendency to integrate traditionally separate economic and social concerns expands, concomitantly expanding both the number of interested actors and the inherent conceptual and informational challenges.

¹⁶ I use the term "organization" to refer to specific organized groups of actors, whereas "institution" refers to larger patterns of relationships into which specific organizations come and go.

GLOBAL

Global environmental law has a history broadly similar to its domestic counterpart, but much briefer and less accomplished. Before World War II there was very little international environmental law, the primary exceptions being treaties to protect migratory birds and a few international water bodies. Since World War II the pace has accelerated considerably, with a raft of treaties and cases seeking to protect transnational environmental resources (Kiss and Shelton 2000). Important examples include the Montreal Protocol on Substances that Deplete the Ozone Layer (“Montreal Protocol”) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), as well as the soon-to-be-ratified Stockholm Convention on Persistent Organic Pollutants (“POPs Convention”).

On the whole, however, progress through the Westphalian system of nation-state negotiations has been painfully slow, while the growth of serious transnational environmental problems has been remarkably rapid. Problems such as global climate change, biodiversity loss, ocean degradation, desertification, drinking water degradation, and hazardous and nuclear waste mismanagement have not been credibly addressed by the Westphalian system. Even where treaties exist, their enforceability and adaptability to change often are subject to serious doubt. Finally, the growing promotion of international trade, and the distrust of regulations that could conceivably constitute non-tariff trade barriers, create international obstacles to improved domestic environmental regulation.

Given the limited capacity and achievements of Westphalian institutions, it is not surprising that global civil society organizations would attempt to fill the gap. As noted in the companion paper, it was the failure of international institutions to protect tropical forests that spurred the growth of forest certification in the first place. For this reason and because of the law-like nature and structure of forest certification, it is in the ironic position of being faced with the same questions confronting traditional legal systems.

FOREST CERTIFICATION AS ENVIRONMENTAL LAW

This section treats forest certification as a form of environmental law and starts to ask some of the questions regarding certification that are asked of environmental law. Of the many possible criteria that could be deployed and their variants, this paper focuses on four general areas: efficacy, coherence, adaptability, and legitimacy. Its goal is more to clarify and frame important questions than to answer them at this stage, although some working hypotheses are offered.

EFFICACY

In modern times, the criterion most frequently invoked to evaluate legal systems is that of efficacy (e.g., Jones 1969). Its core question is whether the legal system effectively governs how people interact in a given field. In the case of environmental law, the question is whether the legal system effectively governs human relationships to the biophysical environment. Ironically, there has been very little research on the overall efficacy of Phase 1

and Phase 2 environmental law systems. This is in part because of the enormous difficulty, if not impossibility, of attributing cause and effect relationships to such large phenomena.

There is also an important and contested preliminary problem: efficacy toward what end? Neither the traditional environmental law system nor forest certification have come up with a clearly defined end. Indeed, as suggested above, part of the operation of any legal system focuses on defining the goals of the system. Environmental law and forest certification are caught up in larger societal dialogues on environmental policy. In the past two decades societal conceptions of environmental regulation have begun to shift from relatively narrow, negative conceptions of controlling pollution and other destructive practices toward broader, more affirmative conceptions of achieving sustainability and sustainable development. These affirmative conceptions include important social and economic goals, such as economic vitality and community stability. For this reason alone they are harder than negative goals to operationalize, and their achievement is accordingly harder to “certify.” In fact, the difficulty of documenting sustainability prompted the Forest Stewardship Council to redefine what its program certifies, from “sustainably” to “well” managed forests.

Nonetheless, there has been considerable discussion about the efficacy of forest certification, mostly focusing on how well it protects the environment.¹⁷ The first level has debated the comparative advantages of programs based on substantive standards versus those based on environmental management systems (e.g., Hauselmann 1997; Krut and Gleckman 1998). The second level has debated the comparative effects of different standards-based systems (e.g., CEPI 2000, Meridian Institute 2001). Although some of this debate is based on limited empirical research, most of it is hypothetical-deductive in form. In other words, it assumes that standards will be fully implemented and then compares the assumed effects of the standards. Similarly, standards systems and environmental management systems are compared based on analysts’ assumptions about how they will work in practice. These assumptions often are based on a queasy mix of real-world experience and commitment to different management philosophies and even theories of social control.

Many of the analyses that have been done are useful in that they clarify the terms and structures of certification programs. And despite my critical posture, it is my impression that forest certification programs are leading to some improvements in forest management (see generally Meidinger 1999:164, 199, 217). Still, we know very little about why or where or under what conditions. And debates regarding the relative merits of different approaches probably cannot be sorted out at this point because we lack anything remotely approximating evaluation research.

The absence of rigorous evaluation research on forest certification is somewhat ironic, since the efficacy of certification systems is in principle easier to research than the efficacy of

¹⁷ This is not surprising, since there is broad agreement across legal systems that protection of environmental resources, particularly those that are valuable to humans, is a core goal of environmental law (e.g., Lundmark, 1998:9). It does, however, fall short of addressing the post-Rio environment-society-economy goals of sustainable development.

more multi-faceted legal systems. If proper evaluation research were to be done, comparable firms would be randomly assigned either to be certified or not. The certification group would also be randomly assigned to different certification programs so that the programs could be compared (see generally, Campbell and Stanley 1963). The performance of the firms would be measured before and after certification, ideally at regular intervals. Typical performance of certified and non-certified firms could then be compared by program.

Systematic evaluation research is quite unlikely to be done, however, for two basic reasons. First, because certification programs are self-defined as voluntary there is a significant problem with 'selection effects.' Firms choose whether or not to participate in certification programs based on their individual assessments of what is in their best interest. It is therefore likely that significant prior differences exist between firms that enter certification programs and those that do not, and between firms that enter different certification programs or enter them at different times. Accordingly, differences in their performance over time are as likely to be correlated with underlying differences among firms, as with differences in the programs *per se*.¹⁸

Second, certification programs are not designed to produce detailed, comparative data on the performance of forest enterprises. Rather, the whole point of certification is to make a binary classification: certified or not-certified. Firms within the certified category are portrayed as if they were homogenous in performance. The primary site-specific information provided by certification programs is the label itself. The label can be matched up with the standards and criteria on which it is based, but the standards and criteria are general, and do not provide any further information on the particular enterprise. If such information is to be provided, it must come from voluntary action of the firm or compulsory mandates of other regulators, usually governments. This situation exposes a second level of irony: some of the attraction of certification to firms may derive from its potential to stave off mandatory regulatory disclosure of more detailed information on their operations.

In sum, we do not have and are not likely to get anything approximating scientifically persuasive information on the efficacy of forest certification programs. This does not mean, however, that we are incapable of making efficacy assessments and recommendations. Research on other areas of regulation suggests several areas of concern that will have to be dealt with over time as certification systems assess their efficacy and seek to reconfigure themselves. I raise them here in an attempt to spur discussion as early as possible. Given that forest certification is only one forest regulatory system among several, it is useful to consider efficacy from both an internal and external standpoint.

Internal

Viewed internally, regulatory systems can be understood primarily as seeking to control the behavior of their direct "targets" - typically regulated firms. We have a great deal of experience with command and control regulation which might be useful to forest certification. In this section I will touch on only a few issues that seem most immediate.

¹⁸ This is a more general version of the argument that firms seeking certification are likely to be good performers regardless of whether they undertake certification. (E.g., Thornber *et al*, 1999:15).

*Accountability.*¹⁹ At present certification systems are built on a three part accountability structure: policy maker/accreditor→certifier→forest management organization. This is a rough approximation of the agency→inspector→regulated firm structure typical of governmental regulation, but there are several important differences. First, many certification systems seek to improve the compliance of organizations by institutionalizing controls within the firm in the form of environmental management systems. Many government agencies are also pursuing such strategies, but there is little information to date on how well they work. As I have suggested above and elsewhere (Meidinger 1999:199-203), it is hard to believe that environmental management systems will have no effect on firm behavior. On the whole, they seem likely to lead to improvements, simply because they give specific actors in management organizations specific responsibilities for specific issues - whereas before these elements were often highly diffuse or absent in the management organizations. We just do not know how much improvement there is or under what circumstances.

The second important difference is that certifiers are not employees of the certification programs. Rather, they are hired and paid by firms seeking to be certified. Experience with other regulatory programs suggests that this situation has the potential to lead to at least two major types of problems: limited enforcement resources and risks of corruption.

Limited Enforcement Resources. The resources available to certifiers to monitor compliance come from the firms being monitored, and are fundamentally limited by the total magnitude of certification revenues. This means it will be difficult for certifiers to concentrate resources on monitoring firms in the way an administrative agency might, for example, focus its resources on particular companies thought likely to present special problems. Certifiers will generally be hard pressed to set their fees for any particular firm higher than the costs of certifying that firm in order to pay for surveillance of other firms. It may be possible for certification firms to call for help with extra resources from environmental NGOs or foundations in particularly difficult circumstances, but it does not seem likely that they will be able to do so on a regular or continuing basis.

Risk of Corruption. Second, there is a serious risk of what as well be labeled corruption, despite the term's powerful overtones. By corruption I simply mean allowing one's official judgments to be influenced by self-interest in a way that is inconsistent with one's official duties. Because of their need for continuing revenues, certifiers are highly dependent on firms seeking certification and are under pressure to satisfy them. This is particularly true of the ISO 14001 and AF&PA Sustainable Forestry Initiative programs, but also applies to the FSC program. Certifiers have strong interests in pleasing their employers, and are likely to be selected in part because they are expected to sympathize with the viewpoints of their employers.²⁰ At the same time, of course, the reason certifiers are employed is to provide assurance to the public that the firms employing them in fact are performing as advertised. Certifiers are thus placed in an inherently difficult position, since they are in effect public

¹⁹ This paper focuses on internal program accountability and control. The bigger question of democratic accountability to the public (e.g., Spiro 1996) is left for a later paper.

²⁰ For a critical analysis of PriceWaterhouseCoopers auditing of clothing manufacturers, see O'Rourke 2000. For an argument that auditors suffer from an inherent "self-serving bias" see Prentice 2000.

fiduciaries employed by the very private actors whose activities they are supposed to assess and monitor. To date, in my estimation, the public discussion and analysis of this problem in the forest certification arena has been quite limited and exceedingly naïve. This is probably due in part to the fact that the primary basis of reliability attributed to certifiers is professionalism, and the discussion has taken place primarily among forestry professionals. We know from the history of other fiduciary professions, however, including accounting and law, that other safeguards are important and perhaps essential.

Institutional Safeguards. At present there are very few structural safeguards against corruption in forest certification. The primary one in the case of the FSC is periodic auditing of certifiers' decisions by FSC staff. Although this process recently led to the suspension of one certifier's privileges,²¹ the oversight resources of the FSC are very limited, and are likely to remain so for the foreseeable future. The AF&PA system evidently provides for no auditing of certifiers at all, and indeed makes them even more dependent on firms than the FSC system. The AF&PA has provided, however, for a rudimentary external complaint system wherein people who believe they have information indicating that a member company is not conforming to SFI guidelines can submit that information to someone who will keep their identities confidential. This is a start toward creating a more adequate accountability structure, but a very limited and probably quite inadequate one, because there are likely to be few cases in which people have the necessary combination of information and interest to file complaints.

Research on regulatory institutions has produced a broad consensus that triangulation of social accountability structures is important to regulatory efficacy. The key idea is to empower third parties to monitor the performance of both regulators and regulatees (Ayres and Braithwaite 1992). The third parties may be organized groups, or they may be more diffuse actors such as citizens. Many institutional mechanisms exist for achieving triangulation. Perhaps the most important in environmental regulation are "citizen suit" and various "transparency" and public information devices. A citizen suit mechanism empowers parties aggrieved by non-compliance with a rule to bring legal enforcement actions directly against the violator, with or without action by the government regulator (Boyer and Meidinger 1985). Transparency mechanisms give aggrieved parties information with which to publicize the misbehavior of the regulated party to the public at large and possibly to take or provoke legal action. The "community-right-to-know" laws discussed above are one of the most powerful examples in modern law, but there are others (Karkkainen 2001).

It is important to note that triangulation mechanisms place increased compliance pressures not only on regulatees, but also on regulators, whose performance can also be assessed. This creates some structural "balance" in a situation where regulators are responsible for protecting public interests, and is likely to improve the efficacy of the regulators in performing their functions. Another important factor is that the outsiders must

²¹ The certification organization involved was SKAL, based in the Netherlands, which was temporarily deprived of its authority to issue new certificates. (FSC headquarters circular to National Initiatives, April 9, 2001) (on file with author). It was reinstated about a month later, after undergoing intensive discussions and a training session. (Memo from Karen Tam, Operations Officer to FSC Members, May 11, 2001.) (on file with author).

have some leverage to challenge the effectiveness of the system in order to enhance its effectiveness. Typically, this means the capacity to inflict some kind of “bad” on poorly performing parties. Third, of course, this process is likely to make forest certification more of a public phenomenon, and less a narrowly “professional” one.

Many different triangulation structures are possible for forest certification, and it is not feasible to propose or justify a specific one here. Rather, the key point is that to achieve reliable efficacy (and thereby adaptability and legitimacy) forest certification programs will likely need to empower third parties to monitor and challenge the performance of firms and programs.²² The third parties should be involved not only in the policy formation process, but also in the implementation process. Who they should be could vary among from one cultural and institutional context to another, but it seems clear that the issue will need to be worked out for certification to become a dependably effective process.

“*Creative Compliance.*” Another dimension of forest certification that has received much thought by lawyers and some study by socio-legal scholars, but relatively little public discussion by forest certification experts is the problem of “creative compliance.” If pressed, many lawyers would probably acknowledge that one of their most important roles is to help clients “work around” rules. Working around rules does not mean violating them, but rather finding ways to conform to them while sometimes attaining ends that the rules were probably intended to prevent. McBarnet and Whelan (1997, 1999) provide a number of informative case studies of how corporate lawyers have figured out ways to get around financial regulations, often with the tacit cooperation of accountants who enjoy institutionalized trust very similar to that accorded forest certifiers.²³

Creative compliance seems to be an endemic tendency of rule-based systems, and there is no reason to think that forest certification systems will be free of the problem. I suspect that the main reason it has not received much thought to date is that the designers of

²² In principle, it is possible that governmental agencies could play the triangulation role in some contexts. It seems unlikely, however, that those contexts will be ones where agencies are already heavily involved in certification, such as in Europe, since their interests are rather closely aligned with some certification programs (e.g., the PEFC) and opposed to others (e.g., the FSC).

²³ The collapse of the energy trading corporation, Enron, in late 2001, evidently due in part to creative compliance with accounting rules approved by major accounting firm Arthur Anderson, might be taken as an exclamation point to this warning, which was written months before the collapse. However, the exact bearing of the Enron case on forest certification remains to be worked out. One of the commonly cited problems, the provision of both accounting and consulting services by Arthur Anderson, with the consulting as lucrative as the accounting work, may have given Anderson an added incentive to facilitate creative compliance. No evidence has come to my attention that there is a comparable problem in the forest certification context, although it is difficult to say with certainty. Most certification programs appear to have bans on certifiers providing consultancy services to firms they certify, but it is not out of the question that some of the experts retained by certification firms may have interests of some kind in the professional advice relied upon by certified forest enterprises. On the other hand, there is a type of accountability pressure present in the financial accounting world that is absent from or much weaker in the forest certification world, and that is the fact that stockholders who might be injured by accountant ratified overestimates of a stock’s value will place considerable pressures on accountants to avoid such situations (Morgenson 2002). If an accounting firm got a reputation for approving questionable practices, its audits would lose value in the financial markets and its business would therefore be expected to decline. There are not likely to be comparable pressures from consumers of certified wood, although competitors might have incentives to police one another to some extent.

certification systems are strongly inclined either to believe their rules will work, or at least not to question them too closely. Moreover, they may be somewhat naïve about the workings of traditional governmental regulatory programs. Eventually they will have to confront the problem, however. They will have to engage in the same kind of process that financial regulators are involved in, which is trying to adjust their rules to close off the loop holes that creative compliers have found and then watching for reports of new forms of creative compliance. At present, however, as is further discussed in the “adaptation” section below, forest certification systems seem poorly equipped to deal with this challenge. They are not organized to systematically collect information on creative compliance. No one in the system has that function.

External

The fact that certification programs operate in a larger regulatory arena, often competing and cooperating with one another and with governments, means that they can also achieve efficacy by influencing other programs. First, and most obviously, there is reason to believe that more rigorous certification programs, such as the FSC, have spurred significant improvements in less rigorous ones, such as the SFI (Meidinger 1999); a moderately optimistic analysis holds that this dynamic is likely to occur to certification programs generally (Fung, et al. 2001). Less obviously, certification programs may also have broader external effects by stimulating improvements in governmental environmental regulation and promoting increased consistency among jurisdictions.

Improved Governmental Regulation. Forest certification programs have the attention of governmental forestry agencies in most of the world. Some government management agencies have chosen to seek certification of the lands they manage under one program or another. Others, particularly in Europe and Asia, have formed alliances with specific certification programs. Even where governments are officially detached they are likely to be influenced in various ways by certification programs. First, as noted above, certification programs are likely to bring public attention to how well government agencies are doing their work, and may possibly spur them to improve. Second, the larger discussion of forestry standards and practices stimulated by certification processes is likely to infuse governmental legal requirements in various ways, including changes in formal rules and informal implementation practices, as well as standards imposed by courts and other agencies (see generally Meidinger 2001a). In Bolivia the FSC-oriented standard setting process undertaken by a non-profit civil society organization led not only to the creation FSC national standards, but also to revisions of government requirements, which ended up being effectively the same. The government regulations also recognize FSC certified forestry operations as complying with forest laws (Cordero 2001).

Third, government agencies could simply require certification as a condition of conducting forestry in their jurisdictions, as some have done already (Meidinger 2001a), thus significantly expanding their total implementation capacity. There are intermediate options as well. For example, when Guatemala makes a land concession to a community forestry group in the Biosphere Reserve it requires the group to obtain FSC certification within three years

(Finger-Stich 2001), apparently as a condition of retaining the concession. Even if they do not formally require certification, government agencies could concentrate their enforcement on uncertified firms, treating certified ones as likely to be in compliance. Again, this would effectively expand total enforcement resources and presumably lead to improved overall compliance.²⁴ Governments could even seek to leverage their overall resources by attempting to ‘steer’ certification programs, as they are doing to a limited degree already (Webb 1999). This strategy might be one of the ways in which states gradually redefine their regulatory roles, increasingly incorporating civil society regulatory programs where they can, and focusing their own efforts on areas where certification programs are less helpful. It should be noted, however, that any obvious increased government involvement in or reliance on certification programs is likely to trigger back-pressure by industry on certification programs. Thus, there might be increased pressure for lower standards and less expensive, weaker inspection practices, as evidently has been the case with the PEFC.

Interjurisdictional Consistency. As a global movement, forest certification automatically creates new channels of communication and comparison across national boundaries. If in fact it has the influence on governmental regulatory standards and practices posited above, certification has the potential to promote increased regulatory consistency and convergence among jurisdictions, both governmental and non-governmental. Although this possibility is subject to the logical challenges of coherence discussed below, it is a goal high on the agenda of both environmental organizations and many transnational businesses, who see advantages to consistent rules across jurisdictions. At present, there remains enormous variability among national systems and different certification systems, but the possibility exists that together they will serve as conduits for convergence over time.

ADAPTABILITY

Ultimately, forest certification will be efficacious only to the extent that it promotes sustainable forest management. Promoting sustainability will not be a simple matter of implementing existing rules and standards. First, there is inevitably much we do not know about how to achieve sustainability. Second, those subject to certification programs will often practice “creative compliance”. And third, rule systems generally have unanticipated consequences as great or greater than the intended ones (Jones 1969). Therefore, they need to be adaptable.

In essence the challenge of adaptability is a challenge of learning - learning to solve emergent problems (Lee 1993). Forest certification programs face major challenges regarding how to institutionalize learning. Perhaps because they have conceptualized themselves so much as rule systems, and because there has been so much contention about the content of

²⁴ Interestingly, the degree to which this has occurred to date is unclear. The U.S.E.P.A. evidently has increased the resources it expends on defining and managing the “Performance Track” program, for example, but there is little evidence that it has shifted enforcement resources to monitoring firms that are not in the program (Coglianese and Nash 2001:231-232)

the rules, they do not seem to have taken seriously the problem of gathering and analyzing information about their own performance and how they can improve it.

The primary need is to create feedback loops from ground-level experience to system-level policies. The major repositories of ground level information, certifiers, do not seem to have incentives or resources to share information on implementation experiences or to gather systematic information. Indeed, since they compete with each other, certifiers may have disincentives to share anything beyond the trivial or obvious. Management organizations are also in competition with each other, and would seem to have equally few incentives to share information, particularly when it might cost them money. As forest certification is presently constituted, no other interests have the capacity to gather detailed information on ground level experience.

This situation could change if some of the suggestions for transparency and triangulation made above were to be adopted. It probably must change if forest certification is to become sufficiently adaptive to remain viable over the long term. The fact that the problem has not been more carefully addressed to date seems particularly unfortunate given the potential envisioned by some observers for transnational NGOs to become agents of global social learning (e.g. Finger 1994:65). If this potential is realized, it is likely to be a major development in the capacity of global civil society to circumvent some of the severe limitations of the Westphalian governance system.

COHERENCE

From the perspective of legal theory, forest certification, particularly as exemplified by the FSC, is a stunningly ambitious undertaking. It seeks to create a set of rules and institutions for forest certification that (1) integrate environmental, social, and economic goals and (2) apply them consistently across boreal, temperate and tropical forests (3) in developed and developing regions with vastly different institutional arrangements and cultural traditions. One may pause simply to wonder whether any rational actor would undertake such a profoundly difficult task. Of course a skeptic might quickly observe that perhaps the ambitions of forest certification are not as great as they seem. Actually, what forest certification needs to achieve is an acceptable image of globally consistent rules rather than the “reality” (Balkin 1993). This is also what most global traders would want - a system in which the fundamental qualities of products are not subject to question.

Regardless of whether the ambitions of forest certification are truly staggering, or merely unprecedented, they are worth following closely. The Westphalian system has been utterly incapable of fulfilling either vision. All legal systems should therefore pay close attention to how forest certification fares. If forest certification makes significant progress there is much to be learned from it, both about how to make rules and about the emergent role of global civil society. In this section my goal is primarily to clarify some of the challenges of coherence posed by such a grand set of goals, and secondarily to offer a few observations about what is being done to meet them.

Integration

As noted above, the core goal of integration involves incorporating environmental, social, and economic goals in the same set of standards. This general approach is supported by the increasingly commonplace view, promoted for about two decades now, that one cannot have a healthy environment without a healthy economy and society, and vice versa. Of course, these concerns have largely been kept separate in traditional legal and regulatory systems. The FSC forest certification program thus attempts to break new ground. Initially, it seeks to do so by addressing the various concerns in individual principles. In practice, however, the principles must be accommodated with each other not only in regional standard setting processes, but also, and probably more importantly, in the course of each certification decision. How much responsibility for protecting the environment, for example, can firms be required to carry when they are also enjoined to remain economically viable in a market where not all firms are certified? Similarly, what provisions are sufficient to protect indigenous rights, given that clear adjudications could take a long time in many places, and possibly negate the economic viability of certain enterprises?

These questions have been handled largely in individual certification processes to date, occasionally with considerable public conflict, but mostly below the radar screen. The ideal of the FSC (and derivatively of the PEFC), however, has been that regionally-based stakeholder standard-setting processes will provide contextually appropriate answers, reflecting regional culture and values. Making the tradeoffs in this way implies a culturally based coherence supported by the reasoning developed in decision process. This is fairly similar to traditional democratic justifications for law as well as to Habermas' dialogic model (1989), but it faces several problems. First, of course, it is possible that the tradeoffs would have been quite different if different people had participated in the standard setting process, as has been asserted for example in the FSC Canadian Maritime standard setting case. There the timber industry claimed that the standards were inappropriate because they were developed without sufficient industry input, and was partially sustained by an investigating commission (FSC Commission of Enquiry 2000). While this can be described as a problem of stakeholder theory, it also affects the ideal of coherence, since it may be that regional values simply do not and are not likely to fit together in many situations. Legal theorist Joseph Raz suggests that this is a problem with all efforts to privilege conceptual coherence in law (1992:310).

This problem becomes much more serious when the global scope of the system is considered. The promise of forest certification is that a piece of certified wood from Malaysia is the environmental and social equivalent of a piece of certified wood from Sweden. For this to be the case one of two conditions must be met. Either "equivalent" must mean merely that a regional standard has been set in each case and that each piece of wood meets the applicable regional standard (avoiding for the moment the problem of setting a standard for what constitutes a legitimate standard setting process). Or, there must be some logical relationship between the standards making them comparable within a larger framework. Most forest certification programs are strongly committed to the second principle, although they vacillate on how to meet it. The environmental NGO FERN, for

example, argues that one reason performance based systems are necessary for certification is that only they can achieve coherence. Environmental management system standards, by contrast are fundamentally incapable of achieving coherence (FERN 2001:17).

The commitment of forest certification programs to coherence reflects an underlying assumption that there is globally common standard for proper forest management, and that it is possible for forest certification programs to certify it. The assumption of a common moral standard seems to apply equally to the global civil society movement. Thus forest certification in particular and global civil society in general are faced with the need to create coherence in order to advance their causes. I will not predict whether or how they will do it - only that they will and must try. One route is for certification programs to promote master metaphors, such as “ecosystem health” and “sustainable forestry” (e.g., Shannon, Meidinger and Clark 1996) and position themselves to be the ones who progressively fill those metaphors with concrete meaning. It will be interesting to compare the process with developments in international commercial arbitration (Dezalay and Garth 1996) and computer operating systems (Lessig 1999), where competitive informal definitional processes seem to have been key, with forest certification, which seems to lean toward more formal arrangements.

It will also be interesting to observe to what extent variations in specific standards can be reconciled with the requirement of coherence. Can the FSC, for example, effectively persuade people that requiring elaborate protective equipment for adult workers in Swedish certified forests is equivalent to allowing barefoot twelve-year-olds to work in third world certified forests, where if they do not do so their families they may starve? How will this be done? The current debate within the forest certification world will eventually have to find a social reception outside it. In doing so it may have to develop a persuasive account of how facially different regional standards should be seen as effectively consistent.

Federalism

The FSC is organized to address the problem of regional challenges to coherence primarily with a system of closely coordinated federalism. The primary processes involved are central review of regionally developed standards for conformance with the international principles and criteria, and inter-regional “harmonization” processes. A number of examples of each are now complete, and will undoubtedly be subjected to intensive review. From a legal scholarship standpoint, the harmonization processes are fascinating. While there are some guidelines for how they are to be carried out, they seem to vary greatly from one region to the next. This is not to say that they will not work well, only that a theory of why they work well will have to be developed after the fact.²⁵

²⁵ To date, the PEFC has devoted considerably less resources than the FSC to the problem of inter-regional harmonization, and indeed seems to start from the assumption that all European standards are fundamentally comparable. As Reh binder (2002) points out, the FSC is not free of the problem, in that many of the regional standard setting bodies are organized according to national boundaries, thus suggesting a potential “renationalization” of standards. Nor is his critique vitiated by the fact that the larger nations include multiple regional standard setting bodies.

Moreover, if one compares these harmonization processes to traditional Westphalian ones, they could come out looking fairly good. It is quite possible that NGOs and certification programs link levels and regions much more successfully than governments. They also benefit from a narrower set of concerns. The Maritime region's view of the Great Lakes region's herbicide policy, for example, is not dependent on the Great Lakes region's position on software sales to the Maritime region. Global Civil Society programs also benefit from rapid communications technologies, less cumbersome decision procedures, and (perhaps) less turf wars. Moreover, it is not inherently obvious that they are less "democratic" than Westphalian decision systems (Finger 1994:58), given the all of the well known shortcomings of governmental decision making. All in all, then, if coherence can be achieved, there is some reason to think that civil society organizations are in a plausible position to do so.

The main shortcomings of global civil society regulatory programs are their incapacity to raise taxes and conduct wars - not minor defects, but perhaps not as important as they were in the rise of state regulatory institutions. Though poorly funded and under staffed, these small programs made up of relatively well informed participants who communicate regularly may have better prospects of achieving closure in the harmonization process than so non-expert legislatures with much broader issue portfolios. Finally, it is worth noting that the nitty-gritty details in the harmonization and central review processes are being worked out for the most part by foresters and environmentalists, rather than lawyers. While they are not trained for the job, neither are most lawyers, and it will interesting in any case to learn from their experience.

(In)Determinacy

Indeterminacy refers to a condition in which rules, even quite elaborate ones, fail to generate determinate outcomes in particular cases. Thus, one can take a given factual situation, apply the rules to it, and reach more than one logically justified conclusion. In the certification situation, this would mean that the same forest enterprise could be seen as either certifiable or not certifiable depending on how the rules are applied. Some, but not all, legal scholars see indeterminacy as a flaw in coherence and an inherent limitation of all rule-based systems. One common maxim is that the more factors a legal agent is allowed or required to consider, the less determinate her decision will be. In practice the situation is probably more complicated, depending on the nature and magnitude of the factors at issue. But it is worth bearing in mind in the certification context.

I mention the issue for two reasons. First, anecdotal experience suggests that despite the elaborate systems of rules that have been developed in many regions (perhaps particularly in the U.S.), certifiers still seem to feel they must exercise a great deal of "professional judgment" going beyond the rules in making individual certification determinations. Second, these conditions seem to apply even in much more rule intensive (or "juridified") arenas such as administrative regulation. Hence, the tendency of certification programs to promulgate growing numbers of rules, criteria, and indicators is not likely to resolve the problem of indeterminacy. Accordingly, the programs should probably consider

whether they would be better off simply publicizing and attempting to explain the role of professional judgment in their operations.

LEGITIMACY

No legal system can endure for long, or be broadly effective, relying solely on coercion. Rather, it must enjoy voluntary compliance by the great majority of persons subject to it. In attempting to understand why and when legal systems are successful, much sociolegal research has focused on how they build social authority so as to elicit voluntary compliance. Given that certification systems have very little coercive capacity, this research is particularly relevant to them. Perhaps the most widely relied upon concept in explaining legal authority has been that of legitimacy. Max Weber argued that a legal system has legitimacy when it can, without using coercion, elicit compliance with its rules or decisions even from people who disagree with the substance of those rules or decisions (1978:31). This is the “pull toward compliance” referred to above.²⁶ The degree of legitimacy enjoyed by forest certification today is unclear, and in fact is deeply contested (Cashore, et al. 2001). Some observers, echoing my long-ago conversation with Professors Lyons and Mohawk, think it inevitable and only a matter of time until the obvious rightness of certification wins the day. Others view certification as a fundamentally coercive phenomenon. One industry representative told me bluntly that “proper forest management is what the FSC says it is . . . nothing more, nothing less”. His point was that the reason his company would maintain FSC certification was simple economic self-preservation. It could not afford to get a bad name in its markets, and the FSC and its allies were capable of giving it a bad name. Other company representatives have of course said the opposite, and talked about the basic correctness of the FSC or other certification standards.

For now, it appears that the legitimacy of forest certification programs is largely derivative, and reflects the credibility of the groups affiliated with them. Thus the FSC program relies primarily on the public legitimacy of environmental (and to a lesser extent labor and human rights) NGOs, while other programs rely more on the somewhat uncertain legitimacy of the forestry profession, industry, and state agencies. Over time, however, the dynamics of legitimacy are likely to become more general, and certification systems will have to develop their own legitimacy. Whether that is happening and how is currently an open question subject to ongoing research (Cashore et al. 2002). By their nature, however, certification systems face two especially intriguing problems of legitimacy, with which I close this paper.

The first problem has to do with certification programs’ reliance on market relationships and consumer preferences to organize governance institutions. This strategy

²⁶ Whether and when legal systems actually function in this way is a difficult question about which I make no assumptions here. As Alan Hyde (1983) has pointed out, it may be a mistake to assume that legal systems generally enjoy legitimacy. It is quite possible that behavior described as being based on legitimacy is actually based on self-interest or other functional considerations. On the other hand, as Franck’s (1990) scholarship makes clear, it is difficult to understand many developments in international law without the concept of legitimacy.

may give up one of the traditional legitimacy advantages enjoyed by civil society organizations, which Ann Phillips describes as having a much greater capacity to “capture people’s hearts and minds” (1999:58) than do governments. Assuming that her assessment is accurate, it is worth pondering the implications of the use of marketing techniques to organize civil society relationships. Might this strategy inherently reduce the depth and durability of commitment to civil society norms? Might it reframe the background in which civil society actors are seen so that their views have the same ontological status as all other individual consumer tastes? If so, the use of market methods could create considerably greater difficulties than are currently apparent for holding certification institutions in place over the middle and long term.

The second legitimacy challenge has to do with the global reach of forest certification programs. To date, the primary focus of certification systems has been on retailers and consumers in wealthy countries. In a global civil society, however, they will have to legitimate themselves simultaneously with poor, third world woods workers and villagers and with relatively well off northern workers. This is a major challenge - one that no governmental or intergovernmental body has come close to meeting. If certification programs in fact achieve anything approximating north-south, inter-class, inter-cultural legitimacy, they will have pulled off an organizational feat unprecedented in human law and governance. Ultimately, however, even if they are successful in establishing global legitimacy, we will not know for some time whether they thereby function to challenge and supplant governmental legal systems, or in fact to extend and amplify them.

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FOREST CERTIFICATION AND ENVIRONMENTAL LAW

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INTRODUCTION

Forest certification was originally devised as an instrument to promote sound forest management practices in developing states. Because of the rapid disappearance of tropical forests, which are vital for protecting sinks for greenhouse gases and maintaining biodiversity, there was at one time a serious threat that major consumer groups would entirely refuse to buy wood products from tropical countries. However, this paternalistic and ultimately ineffective approach was soon abandoned in favor of a more subtle technique of achieving acceptable and appropriate management practices from enterprises who are engaged in the management of tropical forests. The Forest Stewardship Council (FSC), founded in 1993, has been crucial in trying to promote sustainable management of tropical forests. It has done this by combining the setting of substantive standards for sound forest management and supervision of adherence to these standards, on the one hand, with reliance on the market preferences of manufacturers, distributors, and consumers through the information and confidence provided by the award of an environmental label, on the other hand. The FSC program is international in character, although it allows for a relatively high degree of national variation. Since its inception, it has spread from tropical countries to countries in moderate or boreal climate zones, such as the United States, Canada, Scandinavia, and Germany. The forest area covered by the FSC certification program exceeds 22 million hectares, and in Germany more than 240,000 hectares are covered. Since 1998, the Pan-European Forest Certification (PEFC) program has emerged as a powerful competitor against the older FSC program. Although younger and limited in geographical scope to Europe, the PEFC program covers about 37 million hectares; the figure for Germany is 3,850 million hectares. Moreover, there are a number of national forest certification systems, such as the Sustainable Forest Initiative established by the American Forests and Paper Association and the Indonesian forest certification system.

There are distinct differences between the two major international forest certification programs as regards the standards applied for certification, the societal groups supporting the relevant program, the relationship to forest authorities, and the political, administrative, and legal background factors (Bass and Simula 1999; CEPI 2000; Hansen and Juslin 1999; Sprang 2001). This makes very difficult any abstract discussion of the role played by forest certification in the international community and in the political - administrative systems of participating countries as well as of its significance as a novel instrument of environmental

policy. However, it would be unilateral to focus on the FSC scheme, since this scheme, although certainly the vanguard of the forest certification movement and dominant in tropical countries, has not been able to gain much support in Europe in the confrontation with the PEFC program.

This paper analyzes forest certification from a state-oriented perspective, setting it in relation to environmental policy developed and implemented by the state. Although I do not ignore the existence of the phenomenon of self-regulation, especially at the international level, my major understanding is that, even if one admits shortcomings of the political system based on the state, it is the state (and the international community) that must retain a residual responsibility for the pursuit of the public interest with respect to self-regulation and, hence, also forest certification systems. With this understanding, the paper looks at the reasons for the emergence of forest certification systems; analyzes their function as an “instrument” of environmental policy and law, especially their relationship to other soft (or flexible) instruments; and evaluates them under the perspective of consumer information, ecological effectiveness, coherency, and legitimacy.

I have a long-standing interest in nonregulatory instruments of environmental policy, including self-regulation. Although I am not a specialist in forestry law, I was involved in research on forest utilization contracts in tropical countries in the 1980s, and, later on, as a member and then chairman of the German Council on Environmental Policy (Sachverständigenrat für Umweltfragen), I was involved in preparing a chapter of the council's last biannual report on German environmental policy, which deals with the ecological aspects of forestry policy in Germany. Forest certification is a phenomenon in which I can put these interests and experiences together to make a meaningful outsider contribution to a discussion that is largely led by specialists.

TRANSFORMATIONS OF NATIONAL STATEHOOD, THE INTERNATIONAL COMMUNITY, AND ENVIRONMENTAL POLICY AND ITS IMPLEMENTATION

Transformations of National Statehood

Conventional forestry policy and environmental policy with respect to forests are based on the classical paradigm of the hierarchical state. This is especially true of developed countries, although, because of large state holdings of forests and the recognized professionalism of personnel responsible for managing forests, there has been a relatively large measure of autonomy compared with other sectors of environmental law. In developing countries, the classical model is largely blurred by the weakness of the state. To date, the relations between the state and the civil society are no longer exclusively characterized by hierarchical control exercised by the state. By contrast, in many instances the model of hierarchy has been replaced by coordination between state and societal actors, which expands the role of civil society (for the notion of civil society, see Walzer 1995). Coordination takes place in a variety of forms. There are negotiation systems that comprise state and societal actors, and there is

an increasing degree of self-regulation either “in the shadow of” or even without state involvement. The increasing importance of new forms of coordination and private ordering reflects fundamental transformations in the relationship between state and society. On the one hand, in modern democracies the political system assumes to an ever-increasing extent new and more complex tasks. On the other hand, the ability of the state to steer societal processes in a centralized and hierarchical manner is decreasing because of the modern structural development of society with its pluralistic value system. The state is confronted with tasks that it cannot complete with traditional steering mechanisms. Negotiation systems between state and societal actors as well as independent self-regulation by society react to this phenomenon (Elliott 1999; Mayntz 1993; Scharpf 1993; Schuppert 1995).

In many cases, these negotiation systems consist of policy networks. These networks contain a variety of actors who have an interest in the object of regulation. Networklike structures make it possible to use the problem-solving potential of all actors and to achieve common solutions of complex and long-term problems of society in the framework of relatively stable and institutionalized cooperation systems. These include the formulation and implementation of environmental policy. In spite of this, the state retains a privileged position; it represents or may represent the public interest and operates or may operate as a moderator. It can take recourse to imperative controls whenever the policy network produces clearly insufficient results. It can be a formal party to the negotiation system by participating in the bargaining process. Even if it abstains from doing so, it retains residual powers as described. Societal ordering occurs in processes that lack formalized requirements as to the legitimacy of the participating actors and do not automatically ensure fair access of all interested parties; normally, only those actors are admitted who share the values established by the system. Therefore, it is not evident that the solutions achieved by policy networks are always acceptable. If a fair representation of all relevant economic, ecological, and social actors is provided, one may expect that this will contribute to a satisfactory performance of the process. However, even in such a case, this is not necessarily true, because the compromises reached by the groups may be at odds with, for instance, the logic of a market system. In addition, given the undeniable fact that the rooting of many nongovernmental organizations (NGOs) in society is quite weak as compared with political parties, there are problems of representative capacity and accountability. The process is not controlled by the kind of checks and balances provided in state decision-making processes through periodic elections.

Transformation of the International Community

The transformation of the relations between states and civil society is most conspicuous at the international level. Under traditional public international law, the states are the sole actors in the international arena. International civil society, in various international arenas, has emerged as a major actor, in part because of the limited problem-solving capacity of one-dimensional international negotiation and decision-making systems in which states operate as sole actors, but also because of the quantitative growth of the international community, global information techniques, the globalization of the economy, and the pressures and ever-

increasing globalization of problems to be addressed (Falk 1997; Falk and Strauss 2000; Teubner 1997). This phenomenon is most important with respect to the regulation of international commercial transactions in which the *lex mercatoria* and international arbitration have become dominant, but it also extends to other areas. NGOs do not just play an important role in international negotiations between states; rather, private ordering by civil society has become an important aspect of international regime building with respect to economic and social as well as environmental matters. It is safe to say that the role of the civil society is much stronger at the international than at the national level, probably because of the greater discrepancy between the problem-solving capacity of the old, state-based paradigm of international negotiation and decision making and the pressure of global problems. Even if one uses a broad definition of law, it is safe to say that not all “products” of the international civil society can be denoted as (societal) law, as the activities of the international civil society include participation in state-dominated negotiation systems.

Transformation of Environmental Policy and its Implementation

Deficits of conventional instruments

Since the Rio Declaration, the principle of sustainable development has become the dominant principle of international economic, social, and environmental policy, although, according to the Rio Declaration, it is up to the signatory states to develop their own concept of sustainability. It goes without saying that differences in factor endowment, degree of development, extent of consumption of natural resources, and ability to reduce this consumption lead states to emphasize quite different aspects of their sustainability policy. Whereas in developing countries the focus is clearly placed on development, industrialized countries tend to construct the principle of sustainability more in the direction of protecting the environment and natural resources.

What is interesting in the present context is that the ends-means rationality that underlies traditional environmental policy - be it based on the preventive or even on the precautionary principles - has lost its monopoly as an intellectual standard of policy making in the field of sustainability policy. Although the relevant international texts call for sustainability strategies that also embody quantitative targets, in view of the complexity and interrelationship of the environmental, social, and economic aspects of sustainability, it is often not possible to set concrete environmental or resource conservation targets. Widespread scientific uncertainty about the existence and extent of risk, the complexity of potential adverse impacts of relevant measures on industry and the labor market, the danger of shifting the problem from one environmental medium to another, the need to achieve structural change of the economy as well as change in the whole society's value system - all these factors render conventional ends - means rationality less useful; rather, they require proactive environmental policy. Such policy aims at an environmentally friendly societal structure but often must rely on merely guiding the general direction of intended change. Even when it is possible to set concrete sustainability targets, it is in most cases impossible or at least politically highly risky to rely solely on conventional instruments of environmental

policy to implement these targets. This, among other factors, explains the emergence of a new generation of instruments of environmental and natural resources conservation policy.

In implementing its objectives, environmental law in virtually all states, be they developed or developing, has primarily employed command-and-control regulation. It has covered the society with a dense network of laws, regulations, and administrative rules that prohibit certain activities, lay down requirements for other types of activities, make the exercise of such activities conditional on the fulfillment of certain prerequisites, and subject prohibited activities to criminal administrative sanctions. Increasing recourse to planning of environmental quality also amounts to the establishment of a public management system for natural resources that allots scarce land or absorption capacities to particular polluters. Of course, the degree to which these laws are effectively implemented and enforced varies from country to country. Economic instruments are considered by economists as an alternative to command-and-control regulation because they are more suited to the individual costs of pollution control prevention, can foster innovation, and may even be more effective. However, even economic instruments are based on the underlying logic of ends-means rationality. They can only react to pressures exerted by a particular environmental problem that is clearly defined, that is distinct from other problems, whose solution can be fairly well anticipated, and that does not present unpredictable side effects. The problem structure of many sustainability issues is not such that these requirements are met.

Self-regulation

A response to existing or presumed deficits of both command-and-control regulation and economic instruments is self-regulation by industry and/or other parts of civil society (Golub 1998; Rehbinder 1996). Environmental self-regulation may occur in the shadow of possible administrative or economic regulation (i.e., under the threat of the state adopting such regulation), as a result of institutional or organizational arrangements set by the state, or in a pure form without any state intervention. It is only in the former two cases that one can speak of flexible or soft “instruments”, although the delimitation between state-initiated or state-moderated regulation and pure self-regulation is not easy to draw. Even regimes of pure self-regulation may get inspiration from state institutions with respect to the targets pursued and the relevant criteria for implementing them. Forest certification is an example of a type of self-regulation in which the role of the state is very small (Cashore 2000) and that, from the perspective of the regulating state, is not an instrument of state policy in the strict sense. Consensus, information, and organization are the characteristic elements of self-regulation. Although there is a certain degree of overlap, one can coordinate particular types of self-regulation according to their focus on these elements:

1. Consensus: environmental agreements (i.e., contracts, covenants, and informal agreements between government and industry at the national, regional, or local level), good neighbor agreements, normalization, voluntary codes of conduct, and local policy networks (e.g. local agenda 21 groups);

2. Information: emission release information, classification and labeling of dangerous substances, product safety data sheets, eco-balances/product life cycle analysis, and eco-labeling, including forest certification;
3. Organization: environmental officers and directors, environmental management systems such as eco-audits and ISO 14001, environmental protection concepts within the firm.

It should be noted that eco-audit bears a strong information element; however, environmental management systems can also be used as strictly internal “accounting” instruments of self-regulation. Moreover, where environmental management systems are not regulated but based on normalization (e.g. ISO 14001), a classification of the instrument into consensus and organization instruments is appropriate.

Apart from the preceding characteristic features that relate to the object of the relevant instruments, one can classify instruments of self-regulation according to the degree of state intervention or, conversely, self-responsibility with respect to the environmental policy targets to be pursued and/or the institutional framework. The intensity of self-regulation is the product of both features (see Figure 1).

ECO-LABELING IN GENERAL

Definition

Forest certification is a special form of eco-labeling. Therefore, it appears useful to discuss the conceptual problems raised by certification in the broader perspective of eco-labeling (see Basse and Gaines 2000, pp. 73-77; Driessen 1999; Eiderström 1998; Staffin 1996, pp. 205-230; United Nations Conference on Trade and Development 1994).

Informing consumers (used in the broadest sense, i.e., including manufacturers and processors that use a product as raw material or as an intermediary product) about the properties of a product has a long tradition as regards the quality (economic properties, e.g., suitability for a particular purpose or safety) of a product. Examples include quality labels such as the international wool label or the European safety label for electric appliances. In parallel, environmental labeling has the objective of providing environmental information to consumers about specific products.

Normally, one distinguishes between environmental labeling in the broad sense and eco-labeling. Environmental labeling covers a broad range of programs and systems for the supply of environmental information that extend beyond the environmental properties of a specific product. It includes product labeling for which the producer assumes the sole responsibility (e.g. individual marks that claim particular environmental properties, e.g., “recycled paper” or “organic”, for a particular product). Such self-assigned labels raise the question of how the accuracy and completeness of the information expressed in the label can be ensured. Normally, the law on unfair competition is the only means of control that states provide for this kind of labeling. Environmental labeling also includes warning labels, which are often mandatory. Finally, one could include in the broader term corporate image

labels - that is, labels about the environmental performance of a firm that do not bear a direct relationship to a specific product, such as information in the form of a logo or about participation of a firm or a site in an environmental management program such as the European eco-audit scheme or ISO 14001.

Eco-labeling in the narrow sense comprises condensed or aggregated environmental information about a product in the form of a label whose accuracy and completeness is ensured by an independent evaluator. The task of the evaluator is to review information about the product and decide whether it qualifies for the label. Product-related information and independent evaluation (i.e. certification) are the decisive elements of eco-labeling. Independence from producers is considered necessary to ensure the elaboration of neutral criteria and their application to the individual product. The responsible body has three major tasks; namely, to define the eligible product category; develop the relevant environmental issues (i.e. criteria) regarding the use (i.e. quality) and production of the product, including the environmental performance thresholds that must be met by the products qualifying for the label; and, finally, to ensure that a specific product meets these requirements.

Award Bodies

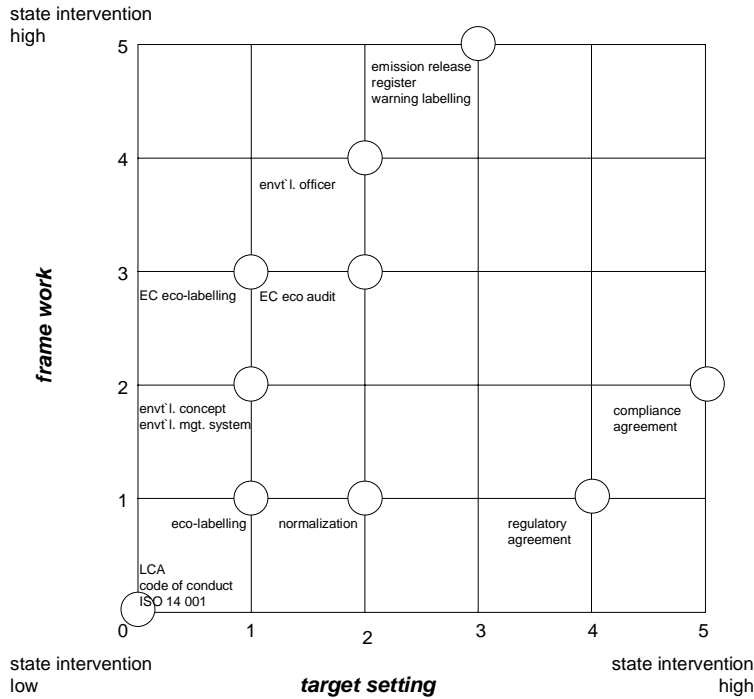
Eco-labels can be awarded by a state agency, a private body in which representatives of the government participate, or a purely private body. In Europe, there are examples of all three types of decision making (Neveling 2000, pp. 84-93, 229-236). For example, the European Community (EC) eco-label "European Flower" is awarded by member state agencies on the basis of criteria that are set by the Commission in a complex procedure that allows for a broad degree of participation by member states and interested parties (Regulation 1980/2000). By contrast, national eco-labels such as the German "Blue Angel" or the Scandinavian "Blue Swan" are awarded by pluralistic nongovernmental bodies on the basis of criteria developed by these bodies; however, they include direct representation of relevant government agencies (up to de facto veto power), which is designed to ensure compatibility with governmental environmental policy. Moreover, the labels get a certain degree of official recognition from the governments. One can say that these systems are built on private - public partnerships. Organic farming labels are awarded by various private bodies; they are based on minimum requirements set by an EC regulation but are further developed (normally, stiffened) by the relevant bodies managing the program. Likewise, the logo for environmental management under the EC eco-audit scheme is granted by a private verifier who must base his or her decision on criteria set forth in the EC eco-audit regulation (No. 1836/93, as amended by Regulation 761/2001 and implementing national legislation). Environmental management certification under the ISO 14001 scheme operates in a purely private fashion.

System Borders

Another important distinction concerns the delimitation of the system borders; that is, the definition of the environmental issues to be covered by eco-labeling (Basse and Gaines 2000, p. 75; Staffin 1996, pp. 219-230). Basically, three different kinds of eco-labels can be

distinguished: labeling as to the environmental quality (properties) of a product, the production methods used in the manufacture, or the comprehensive environmental friendliness of a product. This last label includes a wide range of factors that reflect the full environmental impact of the product throughout its life cycle, from raw material through final use and disposal (this is known as life cycle analysis).

Figure 1: Classification of instruments of self-regulation



Purely quality-related eco-labels nowadays are rare, although one can sustain that in the German “Blue Angel” award scheme, environmental product properties still play a larger role than do criteria based on the environmental friendliness of the production process. Labels concerning environmentally friendly production methods may make claims to superior quality of the product, such as with organic farming. However, in most cases, such association between product properties and production methods cannot be made, and the information provided just takes account of a broader set of assumed preferences of consumers who value the product in part on the basis of the environmental impact presented by the production process. Life cycle analysis is an extension of this approach, covering a wider range of factors that are representative of the full environmental impact of the product. An example is the EC eco-label awards scheme. This scheme is based on a

comprehensive life cycle analysis of all environmental impacts associated with a product from cradle to grave; these impacts are used to define environmental criteria for the award of the label (although the recent amendment of the relevant regulation has attenuated the life cycle analysis element).

The criteria used for awarding eco-labels are mostly substantive in character. However, as regards production methods, procedural criteria may also be applied. This is particularly true of labels for sound environmental management, which claim to measure the environmental performance of a firm or a site operated by the firm but often focus or even limit themselves to the review of the environmental organization and management of the firm or site.

Subjectivity of Decision Making

It goes without saying that all award schemes imply a number of subjective choices about the relevant criteria and performance thresholds by which compliance with the criteria can be determined. Independently of the organization of the award process, the definition of environmental criteria, determination of thresholds, and decision on the award of the label to a specific product heavily rely on experts. However, these decisions cannot be taken on a strictly objective (scientific or technical) basis. The more complex the award scheme is designed to be, the more subjective elements are bound to enter into the process. In particular, any eco-labeling scheme implies a valuation of environmental impacts presented by a product, a production process, or the full life cycle, according to their weight in relation to other impacts associated with the product, production process, or life cycle of the product, not to speak of the determination of the stringency of award criteria and trade offs with economic quality requirements (suitability and safety). Moreover, the definition of the system borders cannot be based on purely scientific or technical judgment, although conventions concluded by experts may alleviate the subjective choices. Even in case of life cycle analysis, the borders of the system must be determined in order to avoid an infinite regression. In this sense, the claim associated with eco-labeling that the label provides consumer information must be made relative. Rather, the label conveys ascribed valuations to the addressees of the message.

FOREST CERTIFICATION AS AN INSTRUMENT OF ENVIRONMENTAL POLICY

Generalities

Forest certification is a Janus-headed instrument of environmental policy that unites organization and information (or self-regulation and reliance on the market). Depending on one's preferences, an analysis of forest certification may emphasize either the former or the latter side of the coin. However, it does not seem an entirely false impression that the preoccupation of many authors with the more interesting aspect of self-regulation by civil society has led to a certain neglect of the market features of forest certification - to the point

that forest certification is described as a self-sustainable system for the functioning and survival of which the market no longer plays any role.

Forest certification is a process through which an independent organization assesses whether wood products use timber from forests that are managed in a sustainable way; this assessment is to reflect criteria and thresholds set forth by essentially nongovernmental bodies. Forest certification is therefore the basis of the awarding of a label to be used in dealing with consumers of wood products. Forest certification is a soft or flexible instrument of environmental policy, in that it uses consumer preferences and is enabled by environmental information to exert an influence on forest owners to employ sound management methods with regard to their forests. However, certification systems cannot do without a relatively high degree of formalization and control. The decision on the award is an administrative one. Moreover, certification systems devise and apply their own organizational monitoring and auditing schemes; they may even institutionalize complaint procedures and thereby come close to a system of adjudication. However, the award procedure as such is closer to administrative decision making than to adjudication (cf. Meidinger 2001, p. 10164). In a way, certification systems establish a second bureaucracy in addition to or more often in lieu of the existing administrative bureaucracy.

Although there are quite a number of national forest certification systems, the reality of forest certification is characterized by the dualism - coexistence and competition - of two major international forest certification systems, the systems operated internationally by the FSC and the PEFC, the latter of which is limited to Europe but has, since its establishment in 1998, surpassed the FSC system in terms of the forest area covered. There are differences between the two systems relating to the object of certification, the representation of groups of civil society in the bodies that run the system, and the degree of internationality (Bass and Simula 1999; Rametsteiner et al. 1998; Sprang 2001).

One essential difference between the two systems is in the kind of certification. Whereas in the FSC system, in principle every single forest enterprise is assessed, the PEFC awards eco-labels for whole regions, and the assessment is limited to taking samples. The criteria applied by the FSC are more complex in that they are not limited to the environment but cover the whole complex of sustainability, including social and economic aspects of forest management. The FSC is an NGO in which environmental, social, and economic interests from the north (developed countries) and the south (developing countries) are represented. Representatives of economic interests include not only forest owners but also representatives from wood processing and trade. The decision-making power of the organization is divided into three chambers - economy, environment, and social affairs, with northern and southern subchambers - which affords NGOs a high degree of influence. By contrast, the PEFC system is dominated by forest owners and the paper industry; forest owners have a clear majority in the national decision-making bodies. In addition to their minority position, the participation of noneconomic interests is provided at a relatively late stage of the process. There is also indirect governmental participation, because, in many European countries, the state and the municipalities are major forest owners. Finally, the FSC is an international body that has its own control facilities. However, in spite of the claims of true internationality reflected by the organizational structure as well as the basic

criteria, specification of these criteria is entrusted to the national subgroups of the Council. At least to a certain extent, this takes account of national particularities that may amount to an attenuation of the stringency of environmental requirements. The PEFC system is based on sustainability criteria developed by the Pan European conferences on forests, especially those held in Helsinki and Lisbon in 1997 and 1998, but it is essentially a collection of national systems with national control procedures. The “renationalization” of the process may reflect the - essentially correct - assumption that there is no simple, generally recognized (or even possible) definition of sustainability, and, hence, national preferences should be given some weight. It could also be explained by the desire to be able to take account of different factual circumstances, such as forest type, structure of forest holdings, forest work practices, and the like (Meidinger 2002).

THE INFORMATION FUNCTION OF FOREST CERTIFICATION

The problem of synthetic information

Forest certification labels do not contain any information about the environmental properties of wood products. Rather, they assume that the consumers’ valuation of the product also depends on information about the quality of the production methods. However, it is evident that these labels fall short of a comprehensive life cycle analysis, because the relevant criteria are limited to sustainability of forest management, excluding environmental impacts associated with inputs into forest management practices as well as wood processing. Thereby, they avoid valuation and weighing problems inherent in life cycle analysis. The advantage of delimiting the borders of the system in this way is that the instrument is bound to have a more direct influence on sustainability of forest management.

However, apart from the remaining subjectivity of valuations, the real problem is the filtering effect of the label itself. Because of lack of transparency, the label does not afford the consumer true information about various aspects of the sustainability of forest management practices related to a specific wood product. Rather, it contains synthetic (filtered) information that amounts more to a building up of confidence in the environmental friendliness of the product or other aspects of its sustainability than to a provision of information about the product (see generally Basse and Gaines 2000, p. 81). In particular, the consumer does not get information about which factors were evaluated under the labeling system or about to what extent the product complies with relevant criteria. Hence, the consumer cannot make his or her own choice according to his or her own valuation system but rather must rely on the summary assessment by the certification body.

In Germany, advertising the results of product tests has always been allowed as long as the tests have been carried out in a neutral, objective, and nondiscriminatory manner. By contrast, advertising eco-labels has been considered by the courts with much more reservation; normally, the court requires that the producer, apart from displaying the eco-label, also should name the grounds on which the label was awarded (BGHZ 105, 277). Both the EC and the German rules on eco-labels now expressly provide that the label can only be used to advertise products if the reasons for awarding the label are indicated. This is due to

the higher complexity of environmental friendliness as a product requirement as compared with simple suitability, although there is no denying that economic product certification requires a certain degree of subjective value judgment and trade off as well. In a society that emphasizes consumer sovereignty, the substitution of confidence labels for real information might indeed appear problematic. This is especially true of the criteria applied by the FSC, which, in keeping with the three-dimensional concept of sustainability, also include social and economic aspects such as tenure and customary use rights, fair returns, adequate benefits, the working environment, the impact on local and indigenous communities, and economic viability. Although some may see in this complex set of criteria an advantage and a true reflection of the three-dimensional concept of sustainability, from the point of view of consumer sovereignty, this mix seems to be particularly objectionable. The reduction of multiple factors into synthetic values according to which the label is awarded obscures differences in consumers' preferences for these factors. A product may be better in certain respects and worse in others. If the specific state of affairs is not communicated, the consumer cannot assess the product under selected criteria (Basse and Gaines 2000, p. 81). In particular, it must be noted that there is no objective value for trade offs, be they within the sphere of the environmental pillar of sustainability or within the economic and social pillars. There is no reason to assume that a consumer who has a major interest in environmental sustainability of tropical forests should also be interested in local working conditions or the viability of local and indigenous communities (unless, of course, this is a prerequisite for maintaining environmental sustainability). Of course, one can argue that because the certification process involves an independent review and affords the consumer an assurance that the product qualifies as sustainable under the defined criteria, the certification body acts as a virtual agent for the consumer.

Competition between certification systems and information function

Distortions of information may also ensue from the competition between the two systems and their national differentiation. The FSC claims that its program has ecological superiority because of its enterprise-based controls and its higher degree of international comparability. The FSC accused the PEFC of granting blanket certificates to a whole region and permitting nonindigenous species of trees. The PEFC, in defense of its system, refers to large areas of monocultures and the admission of large-scale clear-cutting in Northern Europe even if the forest is FSC certified (Weber 2001). Although from a legal-theory point of view this competition may be conceived as the strife for the "right" societal law, one cannot but suspect that, ultimately, both certification systems may suffer in their credibility and acceptance by the ultimate consumer. Independent research carried out in Germany suggests that, as regards environmental sustainability, the two systems are not far apart and that there are many commonalities (Thoro 2000, pp. 21-36). There seem to be more marked differences regarding the criteria of sustainable forest management from country to country within the two respective certification systems. In Germany, there are even forests that have been certified under both systems. However, this assessment is disputed (FERN 2001).

As can be seen by recent developments with respect to eco-labeling for organic farming in Germany, where there had been relatively strong competition between several

labels that made different claims of environmental friendliness of the farming practices under their control, it might be useful to develop an umbrella label under which a certain differentiation of systems can survive in order to ensure greater acceptance by the ultimate consumer. In view of the fact that, in contrast to the PEFC system, FSC certification rests on the three-dimensional concept of sustainability, this would only be feasible if the FSC introduced at least two separate labels - one for ecological and the other for social and economic sustainability. Apart from overcoming fruitless competition, the advantage of such a step is that it would improve the information function of the label. The alternative to such a strategy of uniting forces might be that, at the end, there is no single credible forest label.

Information and acceptance by consumers

The success of certification systems ultimately depends on the preferences of and acceptance by consumers. It is true that the present discussion of forest certification sometimes conveys the impression that forest certification can be established and maintained as a self-sufficient system without consumers; then the label would simply function as a purely corporate image label. In support of such a position, one could point to the success of environmental management systems such as ISO 14001. However, environmental management systems largely rest on their perceived ability to unveil the hidden cost-saving potential of participating firms with respect to energy and resources consumption, the control of pollution, and the development of clean products. A comparable cost-saving potential arguably does not exist in sustainable forestry, at least not in all forest types (cf. Brockmann et al. 1996). If one assumes that forest certification entails extra costs, the concept of a self-sufficient forest certification system without consumers is not very realistic. Rather, wood processors and retailers who count among the most fervent supporters of forest certification, as well as forest owners and concessionaires, must earn the extra costs of certification on the market. If product differentiation through use of the label at an extra price is not accepted by a sufficient number of consumers, the market agents might abandon the label.

Therefore, economic theories about costs and benefits of ecological behavior, on the one hand, and theories about social-psychological interdependencies and the psychology of consumer behavior, on the other hand, must be included in any analysis of forest certification. Effective corrections of consumer behavior seem to depend on the convictions of the individual consumer about the effects of his or her actions, the expectations of other consumers, and the barriers for change that have to be overcome individually. Empirical results of consumer research suggest that environmental information must be oriented toward the needs of consumers, must contain a sufficient degree of detail in answering questions that many confront the consumer in using a product, and must emphasize environmental improvements and renounce general moralizing (Gottschalk 2001, pp. 209-281). To a certain extent, the more modest PEFC label corresponds more to these requirements than does the more ambitious FSC label, although both systems suffer from a lack of detailed information. One may argue that, in contrast to ecological product quality in the strict sense, the consumer is less interested in detailed information about production methods when these methods do not have a direct impact on product quality. Nevertheless,

given the concern of some or even many consumers about adverse impacts on global climate of deforestation in tropical countries, it seems that there is an interest in more detailed information, even with respect to timber production methods. Renouncing such information by concentrating on mere confidence labels may impair acceptance of the relevant wood products by environmentally conscious consumers, so that the market potential is not fully used.

ECOLOGICAL EFFECTIVENESS

The certification criteria claim to ensure sustainable management by certified forest owners, concessionaires, and their managers. Although this claim is made relative by difficulties in defining and determining sustainability of forest management, in particular in tropical forests, one may assume that participation in a forest certification scheme at least leads to an improvement of forest management (Meidinger 1999, pp. 192-203). Seen from the perspective of the market for wood products, forest certification indirectly (i.e., via the demand chain, ranging from consumers, through trade, to various wood processing enterprises) reaches forest owners, concessionaires, and managers and influences their behavior. Therefore, as already stated, acceptance by a sufficient number of consumers is of primary importance. The extent to which one can expect such acceptance is controversial because, on the one hand, there are divergent estimates about the cost implications of sustainable forestry and, on the other hand, one has only vague ideas about the percentage of consumers who are interested in sustainable wood products (see Kühn 1999; Rametsteiner et al. 1998; Thiele 1999). Conservative estimates indicate that only 10-15% of the consumers may have this kind of sustainability-oriented preference. This assumption appears realistic because, although health-related food quality undoubtedly is closer to the heart of the consumer than is sustainable forestry, the market for organic food products in most developed countries has remained a niche market. Lack of consumer acceptance of forest certification is a strong limiting factor to its ecological effectiveness. However, because competition in a given market is shaped not only by the demand side but, to a certain extent, by offerers as well, acceptance by forest owners and concessionaires is also a crucial factor for the success of a forest certification system. Because of the lower cost of certification and a higher influence of forest owners on the operation of the system, the PEFC program has definite advantages in terms of acceptance by forest owners and concessionaires. This is evidenced by the figures relating to coverage by this system. Moreover, the extent to which sustainability of forest management is increased depends on the geographical scope of certification, the vulnerability of forests, and previous forest management practices.

In spite of the FSC certification system's focus on tropical forests, its influence on overall sustainability of the utilization of tropical forests is bound to be small (Staffin 1996, pp. 272-273; Thiele 1999). This is due to the fact that certification is presently limited for the most part to timber destined for exportation. Only about 30% of tropical timber is bound for export; moreover, at present, demand from East Asian countries such as Japan, South Korea, and China is not included in the system, although the major exporting countries in

this area, namely, Indonesia and Malaysia, participate in the FSC system. In African countries as well as Brazil, forest certification is more relevant because these countries mainly export to Europe and the United States. However, Brazil's share of timber exports in the whole of timber production is relatively small. One can estimate that only 10% of tropical timber can be covered by certification. As long as local timber markets are not developed and certification systems are not also applied to local timber consumption for any purpose, the impact of forest certification on sustainability will remain very small, even though one may expect certain learning effects of successful sustainable forest management for forest owners who do not adhere to a certification system. In addition, clear cutting for agricultural purposes is the major source of deforestation; it is not covered by any certification scheme. Therefore, more thought must be given to the problem that NGOs' concentration on forest certification may amount to a waste of human and institutional energy; it might be better to redirect forces to an improvement of regulation and implementation on the whole forested areas of a given country. The extent to which such a reorientation is a realistic alternative depends on various factors, especially on psychological factors, the problem of "sunk investment" and, last but not least, assumptions about the learning process that forest certification sets in motion for the whole forestry system.

The second factor influencing ecological effectiveness is the vulnerability of existing forests and the distance of present forest practices from sustainability. It is evident that, in both respects, there are fundamental differences between tropical and boreal forests and between management and use of tropical forests and forests in European countries. It is therefore not amazing that, according to empirical research, forest certification in Europe would not result in a substantial modification of forest management (Thoroe 2000, p. 22; cf. FERN 2001, pp. 18-21). However, it seems to be at least likely that, if nations comply with the FSC or PEFC guidelines, the development toward sustainable forest management will be reinforced. This is worthwhile, although one may wonder whether it justifies the costs incurred in establishing and operating forest certification systems.

Flexibility

In assessing the potential ecological effects of forest certification, one must always take into account that a number of factors that shape the behavior of forest owners and managers are of a long-term nature and cannot be quickly adjusted. Therefore, in contrast to the eco-audit scheme that is primarily applied to industry, forest certification systems do not require a continuous improvement of environmental performance. It goes without saying that an ecological modification of the structure of forests that brings forests closer to a natural state requires a long-term approach. Forest certification could, at best, confirm that a particular forest owner is making reasonable further progress toward achieving this aim. Annual reviews of forest management practices, as provided in the new EC eco-audit regulation, may make sense with respect to cutting and other forest work practices. However, in view of heavy capital investment for machinery, quick adjustment to certification requirements may even pose problems with respect to cutting and other forest work practices. In any case, because the long-term nature of forest management is the decisive element of the

sustainability of forestry, the potential for building flexibility into a forest certification system is limited.

COHERENCY

Generalities

Forest certification systems should also be evaluated under the perspective of coherency (Meidinger 2001b, pp. 43 - 48). This has various implications. One can ask the question of whether forest certification systems are inherently coherent; that is, whether they achieve a satisfactory integration of environmental, social, and economic concerns and adequately fulfill their information function by creating transparent forest management practices with respect to different factual configurations, such as different countries and different forest types. Moreover, the problem of coherency relates to the compatibility with other eco-labeling systems. Furthermore, there is the issue of whether forest certification systems adequately take account of the mandates of a market economy. Finally, a positive assessment of forest certification systems also rests on the relationship between certification and regulation of forestry by the state. The question is whether forest certification, with its fairly independent target setting and associated monitoring and auditing mechanisms, has the potential to improve regulation of forestry or whether it has a potential to only duplicate or even impair it.

Internal coherency

In contrast to the PEFC, the FSC certification system tries to integrate environmental, social, and economic aspects of sustainable management of forests. This corresponds to the Rio Declaration's three-dimensional definition of sustainability. However, the Rio Declaration empowers the signatory states to develop their own concept of sustainability. In industrialized countries with a functioning market economy and an adequate system of social security, it is problematic to pursue economic and social goals in a piecemeal fashion, product line by product line. Even against a background of relatively high unemployment, it does not really make sense to try and optimize employment in the forestry industry. This explains why the PEFC system renounces the inclusion of economic and social objectives. This is not an inferior type of forest certification but one that corresponds to the needs and possibilities in Europe. Even with respect to developing countries, one may doubt whether the integration paradigm prescribed by the FSC system has been and can at all be a full success. As regards the development of sustainability policy by state organs, it is undisputed that this is a largely open, incremental, and iterative policy process whose output cannot be determined in advance. Therefore, the question is why forest certification should fare better. Integration of environmental, social, and economic goals requires balancing all concerns against one another; it is difficult if not impossible to provide globally applicable criteria for making the necessary trade offs, not to speak of the necessity of taking account of the local situation. Award decisions reflect a socioculturally based understanding of sustainability, including the trade offs by the relevant national certification bodies and accredited experts. It

is entirely open whether this understanding and its application on the ground is “correct”; in any case, the central criteria do not ensure consistency of decisions.

From a trade perspective, the increasing globalization of trade in wood products makes an international harmonization of eco-labels in this field desirable in order to ensure equal access to the markets. The FSC certification system, through its international design, seems to highly correspond to this postulate. In this system, it is the task of independent accredited experts to make the assessment of different situations (e.g. different forest types) in different countries fairly comparable. However, because of the impossibility of generating clear-cut generic criteria that apply to living resources, the enormous differences between forest types, economic and social conditions, consumer preferences, and the residual human factor, the harmonizing effect of forest certification, even under the ambitious FSC system, is bound to be limited. National specification of criteria results in a certain renationalization of the certification process. Even in Europe, with its by and large comparable environmental, social, and economic conditions, a true harmonization of forest certification has not occurred. It is characteristic that, as already stated, some commentators assert that the true differences in forest certification do not lie at the level of the two competing systems, namely the FSC and the PEFC programs, but rather at the level of states, with their different forest types, different forest management practices, and different interests of forest owners. One may also doubt whether full harmonization is desirable from an environmental point of view, as consumer preferences are varied from one country to another (Basse and Gaines 2000, p. 27). If, for the sake of international harmonization, certain innovative solutions, such as ecological modification of forests or natural rejuvenation, are discarded when the award criteria are set forth, this may weaken the acceptance of the label in the relevant country. The concept of eco-labeling rests on the premise that the label, in order to influence the behavior of the producers, should reflect the environmental and other concerns on the relevant market. To this extent, some national differentiation appears appropriate.

Relationship to other environmental certification schemes

Another issue of coherency is the relationship of forest certification systems to other certification schemes, such as the EC eco-audit or the environmental management system under ISO 14001. Both certification schemes are general in character, so the forestry industry could participate in the scheme. As a matter of fact, there are isolated cases in which a firm has been certified both under a forest certification program and under ISO 14001. A fundamental difference between forest certification and eco-auditing is that the latter is not related to a particular product and the relevant production methods but rather is designed to comprehensively review the environmental performance of a firm or a site. This dissociation from a particular product explains why the EC eco-audit regulation prohibits the direct use of the eco-audit logo in marketing or advertising particular products; under national competition law, the same is true of ISO 14001. However, these differences between the two certification concepts are blurred when the producer essentially uses only one raw material and the same manufacturing process for all products, as is the case with wood processing. Furthermore, the eco-audit schemes are more demanding in that they require a continuous improvement of environmental performance, but, as has been argued, because of the long-

term nature of forest management, this requirement would be only of limited relevance in the field of forestry. Finally, both the EC eco-audit regulation and ISO 14001 emphasize the organizational aspect of environmental performance and contain few substantive criteria, apart from the basic requirement of continuous improvement of environmental performance and of compliance with applicable environmental law, or at least the ability of the organization to comply. In the ultimate result, there are overlaps but no true conflicts between forest certification and eco-audit schemes. However, one might consider inserting some of the organizational elements of the eco-audit into the forest certification programs.

Potential conflicts with the logic of a market economy

Forest certification reflects an intent to enlarge the spectrum of consumer preferences for wood products that can be expressed on the market. Although the inherent properties of wood products can be assessed more or less easily by the consumer, at least if the consumer is aided by conventional testing organizations, the lack of knowledge about sustainability of production methods keeps the consumer from expressing his or her values concerning these methods in his or her willingness to pay a higher price for wood products that come from sustainable forest management. Although, as already stated, according to conservative estimates only 10-15% of the consumers may have this kind of sustainability-oriented preference, it is entirely legitimate to open the marketplace to the expression of such preferences. Nevertheless, there is a certain inconsistency between private ordering expressed by forest certification schemes and market functions. This has to do with an aspect of forest certification that has already been discussed; namely, the substitution of confidence labeling for true consumer information. Only true consumer information enables the consumer to fully express his or her preferences in buying decisions on the market. In view of the distance between the largely scientific concept of sustainability and the ability of consumers to develop "proper" preferences, confidence labels may be acceptable when they are a synthesis of complex information relating to a clearly defined issue. This requirement is, in any case, not fulfilled with regard to the FSC program, with its integration of environmental, social, and economic aspects of sustainability. The labeling system assumes the existence of a multi-issue-oriented consumer, which arguably is at odds with the reality of consumer preferences and thereby impairs the expression of consumer preferences on the market.

Forest certification and administrative regulation

The final question in this context is that of possible conflicts with administrative regulation of forestry. It seems that general statements are not possible. Using a summary criterion of classification, one may distinguish between nonregulation (including regulation whose implementation and enforcement comes close to nonregulation), weak regulation, and strong regulation. True conflicts can only arise when a particular state pursues a determined policy of short-term conversion of its forest resources into revenue. In this case, sustainable management of forests by owners who follow the guidelines established by the certification scheme could frustrate national policy. If regulation is weak, without a clear policy in favor of speedy revenue generation, forest certification leads to an improvement of forest

management, either directly, with respect to forests covered by certification, or indirectly, by initiating a system-wide learning process about the need to achieve sustainability. Indeed, certification seems to have influenced the debate on sustainability both in industry and in government, and public forest owners sometimes even seek certification of their own forests. However, for most European countries, it is not very probable that forest certification will result in substantial impacts on regulation. Theoretically, forest certification could simply duplicate administrative forestry regulation; for instance, when a state has already taken the lead toward converting forest structure to a state close to nature or toward achieving economic and social fairness with respect to working conditions and participation of all actors in the revenue generated by forestry (cf. Cashore 1999). However, certification gives an impetus for forest management that is close to nature, encouraging mixed forests composed of forest species that are adjusted to location, prohibiting clear-cutting, in principle prohibiting the utilization of fertilizers and pesticides, requiring minimization of encroachments by forest works, and calling for an adjustment of game stock in order to allow natural rejuvenation. If these guidelines are complied with by a large number of forest owners during a long period of time, this may alleviate the tasks of forestry authorities, who can then concentrate their endeavors on strengthening the ecological aspect of forest management with respect to forest owners who remain outside the certification system. Moreover, certification involves a fair degree of monitoring and auditing beyond activities presently carried out by the forestry administration. Even in Europe, with its tradition of sustainable yield forestry and a recent tendency toward an ecological orientation of sustainability, the danger of duplication associated with welfare losses for society does not appear to be very real. Because forest certification programs require compliance with applicable law, their practical impact normally consists of superimposing on the existing body of state law additional requirements. In any case, these programs improve implementation and enforcement (Meidinger 2001b, p. 41 - 42).

Legitimacy

Forest certification is a product of civil society, which fits into the observation that, under present circumstances of increasing complexity of societal problems, on the one hand, and the emergence of increasingly pluralistic values of individuals, on the other, the role of the state is in a process of transformation. However, the existence of self-regulation does not imply a perfect absence of the state. The task is to redefine the role of the state, both in the process of developing policy objectives and in that of implementation.

Although the certification process as such (i.e. the review of forest enterprises or forest areas and the application of the award criteria on the ground) is entirely entrusted to experts or the nongovernmental certification organization itself, there is a certain state influence on the development of the award criteria. In the PEFC system, the award criteria are based on guidelines developed by the Pan European Forest Conferences, especially those held in Helsinki and Lisbon in 1997 and 1998. State influence on the FSC criteria is less. However, it is undeniable that the relevant criteria largely rely on the Agenda 21 and the Rio Forest Declaration. Also, at a national level, where the basic award criteria are specified, the state forest administration may exert a certain influence in its capacity as forest owner. To this

extent, both systems reflect the concept of a public-private partnership, although the emphasis is clearly on the civil society element.

There are advantages and disadvantages of a stronger state involvement. Participation of the state increases the legitimacy of the label by introducing an element of checks and balances and granting the label a certain degree of official recognition; it facilitates renouncement to future, more stringent regulation or even promotes deregulation with regard to certified firms; it may enable better market access of certified products and preferential treatment in public procurement where permissible under relevant national and international trade law. However, in an international configuration, the presence of a multitude of states burdens the negotiation on implementing criteria and setting up the certification organization as well as the administration of the system once it has been established. In this vein, the greater presence of the state in the European certification system may be explained by a greater consensus about the basic requirements of environmentally sustainable forest management. Moreover, independent of the number of affected states, state presence may hamper the adoption of progressive positions with regard to award requirements. If the major source of institutional innovation is civil society rather than the state, the presence of the state is bound to be more of an impediment than a catalyst for progress.

Nevertheless, the legitimacy of forest certification systems with a dominant civil society element is not beyond doubt. The problem is not so much that these systems put the residual responsibility of the state for the public interest into question. Of course they do, in the sense that they function as ersatz legislation in the absence of state action. Forest certification systems may be denoted as a source of societal law, although, being voluntary law, they lack the generality of application that is characteristic of modern state-based law; they may be better characterized as neo-feudal law. In any case, forest certification systems are not closed autonomous systems of a global or national civil society that operate entirely outside the sphere of state law. State law retains a control as well as an enabling function. In a system of parliamentary democracy, when private ordering is substituted for organized decision making by the state, the state must retain and does retain a residual role for ensuring the public interest; the state must be able to either participate in the policy network as a moderator or supervise the process and eventually intervene to correct clearly inadequate results of private ordering. In addition, forest certification systems operate on the basis of the legal system in its enabling function as juridical infrastructure, as is best evidenced when one looks at the contractual element of the operation of the relevant organizations and the property features of the labels awarded. The residual state role is essentially ensured by the applicability, in case of controversy, of the law of unfair competition, which decides whether and under what conditions the eco-label can be used in marketing certified products. In exercising their control function, the courts can also establish minimum requirements regarding the objectivity, neutrality, transparency, and procedural fairness of the award process as well as regarding the need to supply additional consumer information in advertising the label. Moreover, controversies about the correct application of the award criteria can be adjudicated by state courts, unless the parties have opted for recourse to arbitration. Then the role of state courts is, in principle, limited to ensuring compliance with

fundamental notions of justice. However, the relevant arbitration awards would not be binding in third party unfair competition litigation.

The real problem of legitimacy relates to the contents of minimum requirements regarding the objectivity, neutrality, transparency, and procedural fairness of the certification process. One question is whether there should be requirements as to the legitimacy of the NGOs participating in the process - for example, their representative capacity, composition, openness, and democratic organization. Such requirements would be intended to impose some control over the self-appointed guardians of the public interest by introducing an element of checks and balances parallel to that on which the state-based political system rests. Another question concerns participation and transparency - that is, the composition of the relevant decision-making bodies in terms of balanced representation of all interests concerned and the transparency and fairness of the procedure used to decide on the award criteria. Formal rules on participation alone are only one side of the picture; it is well known that there are limits to real participation of NGOs in forest certification bodies because of the high manpower requirements and costs involved. Participation deficits can result in an unbalanced or even discriminatory definition of award criteria and impede the access of foreign producers to the market. However, there is a latent conflict between eco-labeling's objective of promoting the full expression of consumer preferences, which may justify a demanding concept of sustainability, and the interest in open markets. In any case, there are marked differences between the design of the FSC and PEFC systems in the degree to which they allow for stakeholders' participation.

If forest certification is essentially a civil-society-based process, one may well argue that safeguards for ensuring legitimacy that are developed in more or less close analogy to decision making by state organs are not appropriate. Private ordering by the civil society, be it national or transnational, is not by delegation from the state. It cannot be reintegrated into the state by the application of restrictive criteria for "recognizing" its results that reflect the logic of the state. This is even more true in a transnational context. All that suggests some restraint in developing demanding mechanisms for ensuring the residual responsibility of the state. A minimum requirement might be the rules set forth by the World Trade Organization Code of Good Practice of Eco-Labeling, established by the annex to article 4 (1) of the TBT-Agreement.

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