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Managing the Fragmentation of International Environmental Law: *Forests at the Intersection of the Climate and Biodiversity Regimes*



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Presentation outline



- Fragmentation of international (environmental) law
- Climate change, biodiversity and forests
- Interactions between the climate and biodiversity regimes
- Legal techniques and institutional cooperation as management strategies
- Conclusions

Framing the debate: the fragmentation of international law

- Promises and pitfalls of diversification and expansion of international law
- Focus on normative conflicts
- Call for methods and techniques to deal with conflicts



International environmental law: a special case?

- Treaty congestion: >2500 treaties adopted
- Focus on fragmentation *within* one field of international law
 - Compare to ‘trade & ...’ discussions
- Include potential for synergistic effects
 - Move away from focus on conflicts of norms

Fragmentation of IEL in practice



Questions:

- What are the outcomes of regime interactions?
- What are possibilities and limitations of legal and institutional strategies to influence these outcomes?

Climate change, biodiversity and forests (1)



- Forests as carbon sinks or sources
 - 12-20% of global CO₂ emissions
- Climate change affects forest biodiversity
- Climate change mitigation and adaptation measures may affect forest biodiversity
- High biodiversity increases resilience

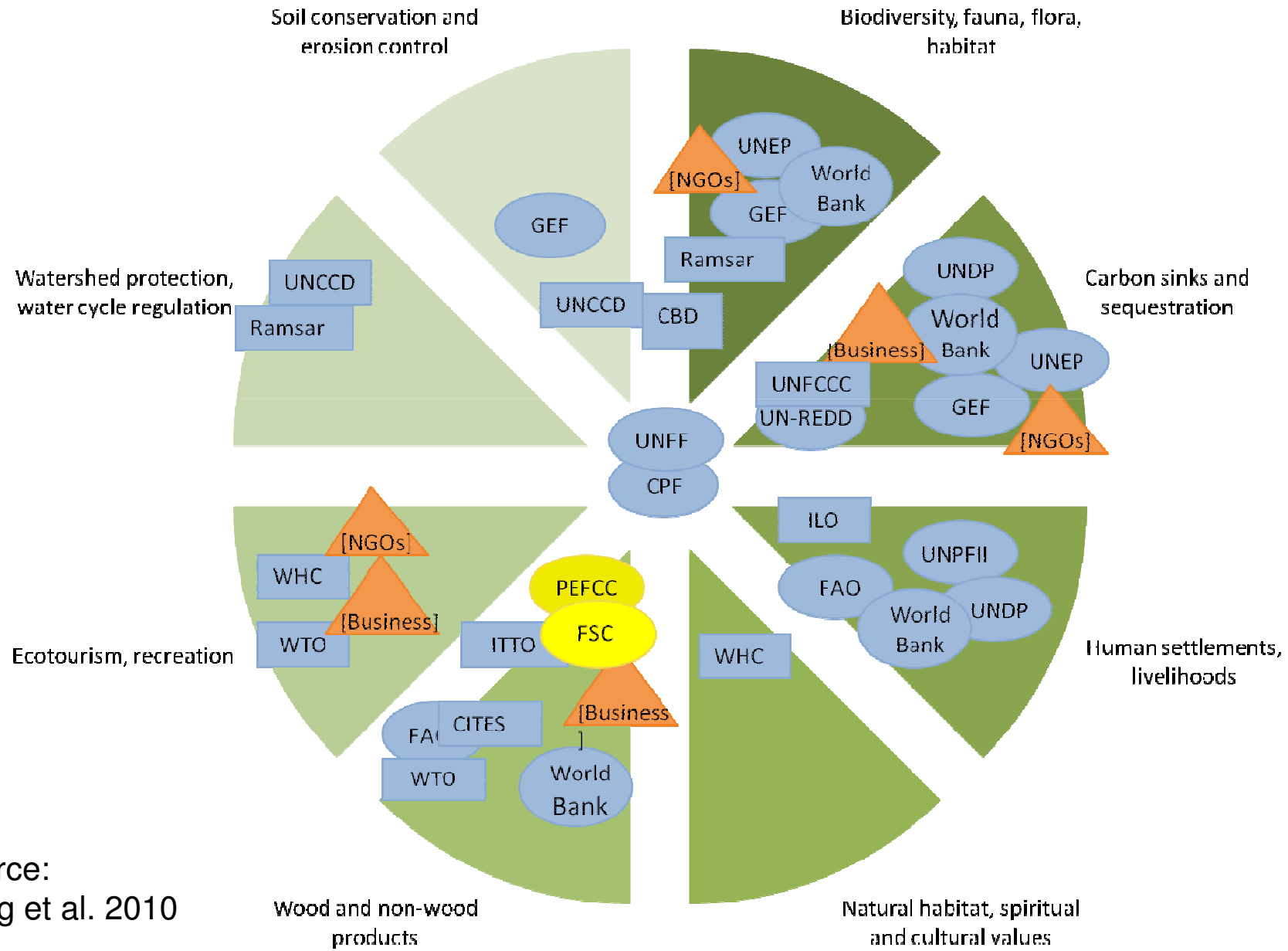


The variety of forest functions

- Carbon sinks and sequestration
- Conservation of biodiversity/habitat protection
- Habitat for (indigenous) people
- Natural heritage, cultural and spiritual values
- Wood and non-wood products
- Tourism and recreation
- Etc.

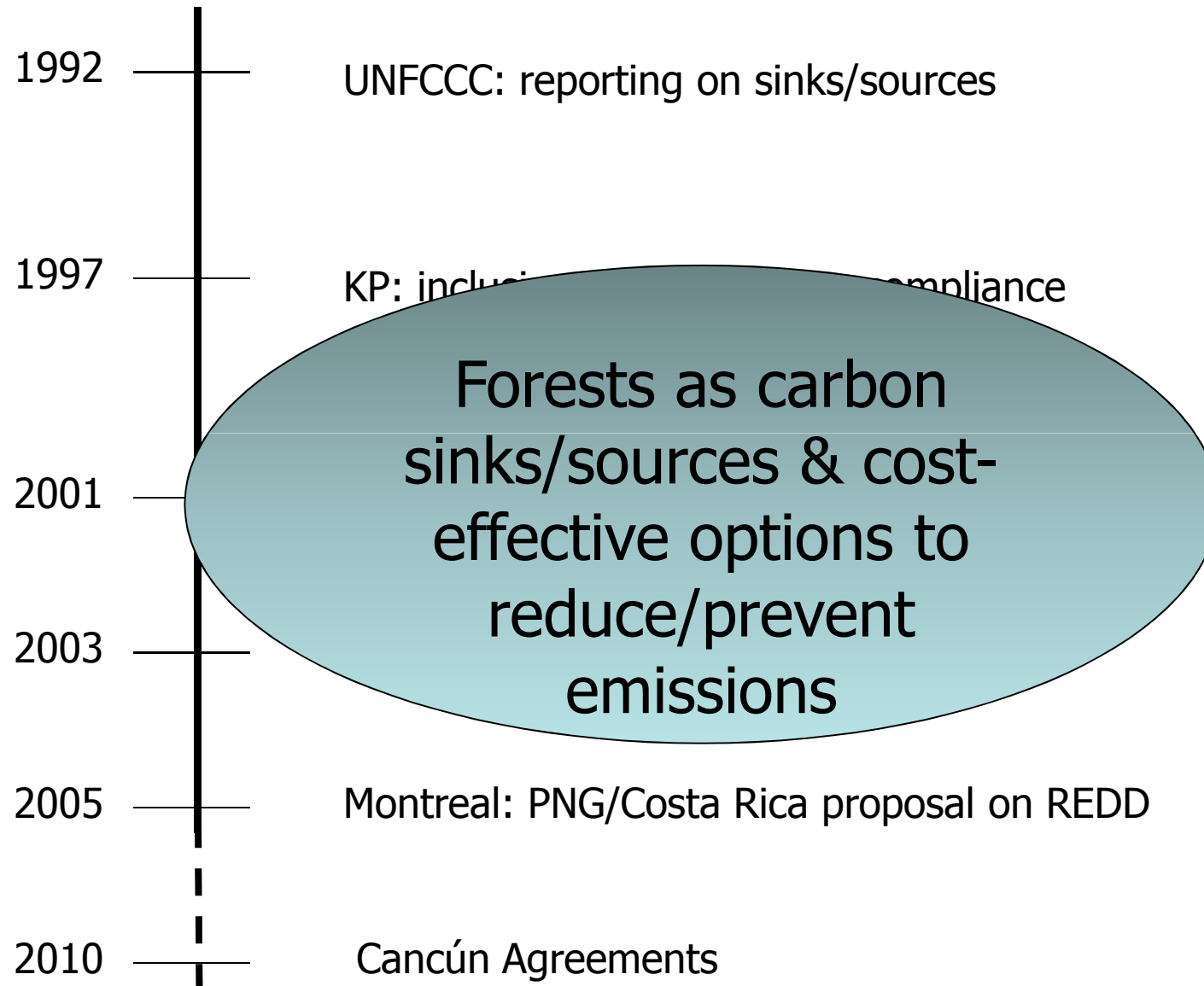


The bigger (governance) picture

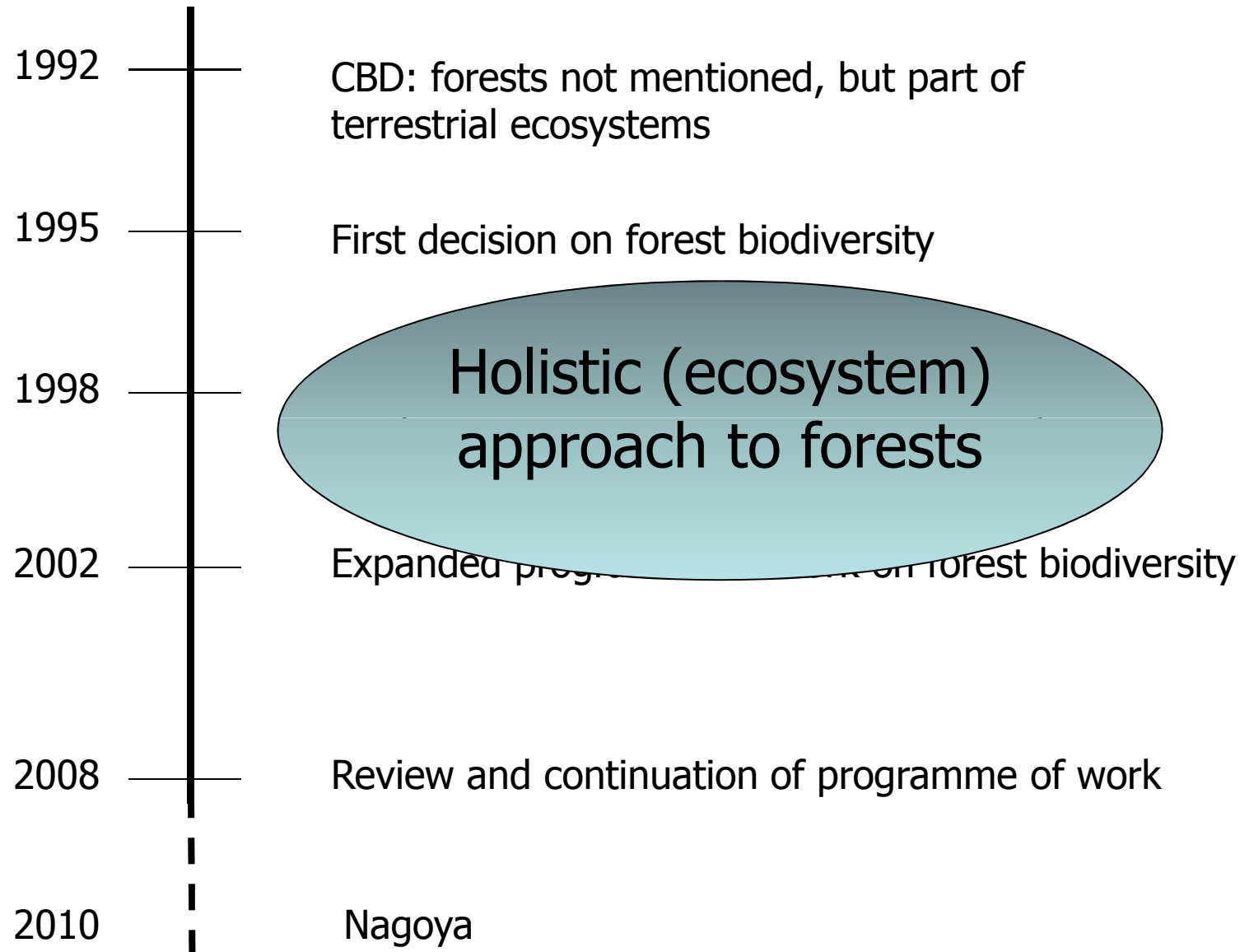


Source:
Haug et al. 2010

Forests in the climate regime



Forests in the biodiversity regime



(Potential) conflicts...?

Sinks in the CDM

- Monoculture plantations
 - GM trees
 - Invasive alien species
-
- Economic incentives *vs* weak safeguards
(but: afforestation/reforestation only very slowly taking off in CDM)



...or (potential) synergies?

- Preventing deforestation promotes conservation of forests and prevents emissions
- Biodiversity impacts of REDD+ will depend on its specific design:
 - Scope and definitions
 - Type of funding
 - Biodiversity leakage



Conflict avoidance techniques

- Drafting
 - Reviewing potential impacts on other treaties
- Treaty interpretation
 - Only to give meaning to ambiguous provisions
 - Judicial bodies or foreign policy advisers
 - Tool for harmonization?



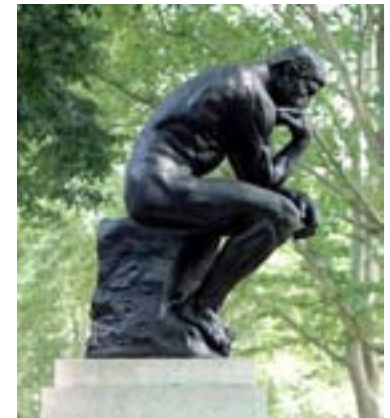
Conflict resolution techniques

- Conflict clauses
 - Art. 2.1 Kyoto: “take into account” relevant MEAs
 - Art. 22 CBD: what is a “serious threat” to biodiversity?
- Conflict resolution rules
 - Lex specialis
 - Lex posterior



Challenges for international law

- What's the conflict?
 - Conflict of norms or conflict of policies?
 - COP decisions and the law of treaties
- Why establish hierarchies?
 - Is there an overarching norm?
 - Towards a dual effectiveness test?



The COPs: passive/aggressive

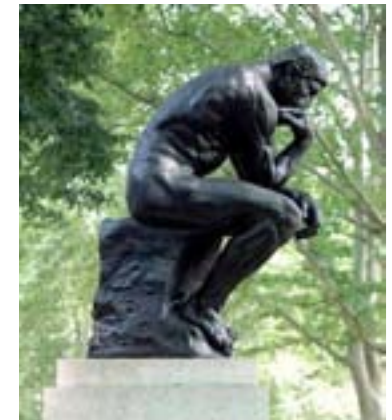
- UNFCCC: mainly reacting to other COPs' activities
- CBD: various decisions on climate and biodiversity
 - Emphasizing ecosystem-based approaches
 - Established expert groups for research on climate and biodiversity
 - Suggestion to cooperate on developing biodiversity safeguards (Nagoya)

The Secretariats: integration by stealth?

- Joint Liaison Group
 - Includes all Rio Conventions
 - Mainly information sharing
 - Explored options for co-benefits
- CBD's Executive Secretary very active
 - Proposed advisory group for bilateral REDD activity
 - Offered to support UN-REDD

Challenges for institutional cooperation

- Incongruent memberships: barrier to 'importing' norms from other treaties
- Legal status of secretariats
 - Limits formal cooperation possibilities (e.g. MoU)
- Legitimacy and accountability of inter-institutional cooperation



Autonomous interplay management

- Governments
 - Sustainability criteria (and monitoring)
 - EIA/SEA requirements
 - Exclusion of LULUCF projects
- Non-state actors
 - Forest certification (e.g. FSC)
 - Voluntary carbon market standards (e.g. CCB)
- But: leaves overall relation between treaties unclear

Conclusions (1)



- Forests are important for many different reasons:
 - UNFCCC/Kyoto: cost-effective carbon sinks/sources
 - CBD: ecosystem-based approach

- Leads to (potential) conflicts and synergies
 - Conflicts: LULUCF/CDM rules
 - Synergies(?): REDD+

Conclusions (2)



- Conflict resolution techniques inherently limited, but some legal tools are available (e.g. drafting techniques; treaty interpretation)
- Institutional cooperation good for raising awareness, but sovereignty concerns remain
- In the meantime, autonomous management as *de facto* way forward

THANK YOU FOR YOUR ATTENTION!



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http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1703186