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Climate Change, Forests, and International Law: REDD's Descent into Irrelevance

Annecoos Wiersema

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CLIMATE CHANGE, FORESTS, AND INTERNATIONAL LAW: REDD’S DESCENT INTO IRRELEVANCE

ANNECOOS WIERSEMA*

ABSTRACT

Forestry activities account for over 17% of human-caused greenhouse gas emissions. Since 2005, parties to the United Nations Convention on Climate Change have been negotiating a mechanism known as REDD – Reducing Emissions from Deforestation and Degradation – to provide an incentive for developing countries to reduce carbon emissions and limit deforestation at the same time. Many believe this mechanism will not only mitigate climate change but will also provide biodiversity and forests with the hard international law regime that has so far been missing. These commentators assume REDD will develop into this kind of hard international law regime. They are wrong.

The true story of REDD, which this article exposes, demonstrates that REDD is developing at counter-purposes to these goals. This article focuses on two aspects of REDD negotiations between 2005 and 2012: the changing scope of the REDD mechanism and the parties’ decisions about the level of international oversight. The true story of REDD is that REDD has developed into a country-driven, voluntary mechanism with limited international oversight and with a scope that makes it extremely difficult to implement. These developments thwart REDD’s ability to achieve its goals.

The article concludes by pointing out two problems that result from confusing REDD with a hard international law mechanism. The first is misdirected focus. If we do not pay attention to the real story of REDD, we are likely to focus our energies on design questions at the international level and miss critically important aspects of REDD’s implementation at the national and sub-national level and through private as well as public initiatives. The second problem is misdirected accountability. REDD’s current scope makes it extremely difficult to administer and maintains an institutional infrastructure that lacks standardized and supranational oversight.

Many commentators warn that the biggest threat to climate change mitigation and biodiversity would be failure to implement REDD. This article counters that the biggest threat to climate change mitigation and biodiversity – and therefore to us – is for the REDD mechanism to go forward as it is currently being negotiated. If we don’t pay attention to the real story of REDD, while we are not looking, REDD will likely become nothing more than a cover for limited emissions reduction, weak forest protection, infringement of indigenous and local peoples’ rights, and harm to biodiversity.

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* Ved P. Nanda Chair and Associate Professor of Law, and Co-Director, International Legal Studies Program, University of Denver Sturm College of Law. I owe sincere thanks to Raven Adams and Nathan Downing for their excellent research assistance on this article, and thanks also to Abby Andre, Sarah Barth, Lexia Krown, and Billy Means for their excellent research for earlier iterations of this work. I also owe thanks to participants of the Colorado/Duke Climate Workshop for comments on an earlier iteration of this article and thanks to the University of Denver Sturm College of Law and the Michael E. Moritz College of Law at The Ohio State University for research funding.
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I. INTRODUCTION

Forestry activities account for over 17% of human-caused greenhouse gas emissions.\(^1\) Climate change and forests are, therefore, inextricably linked. Any comprehensive worldwide strategy to mitigate the pressing problem of climate change by limiting emissions should, it appears, take deforestation into account. Deforestation also exacerbates poverty, contributes to water pollution, and harms biological diversity.\(^2\) If countries could make gains in efforts to combat climate change and address other critical issues at the same time by tackling deforestation, why not take deforestation on at the global level and incorporate it within the international legal regime for climate change?

The mechanism known as REDD – Reducing Emissions from Deforestation and Degradation – is intended to do exactly that.\(^3\) Simply put, a REDD mechanism would give credit to countries or projects for limiting deforestation and, potentially, protecting forests, either in the form of direct funding or by issuing emissions credits that could be traded on a market. In doing so, it would provide incentives for countries to reduce carbon emissions and limit deforestation at the same time. However, this article argues that as it is currently being negotiated, REDD will not fulfill this promise.

Despite some dissenting voices, a broad international consensus has supported REDD and, as such, commentators have focused on questions of design of the REDD mechanism at the international level.\(^4\) In this article, I challenge the central assumption that lies behind this focus

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1. REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, Climate Change 2007: Synthesis Report: Contribution of Working Groups I, II and III to the Fourth Assessment 36, fig. 2.1 (Pachauri, R.K. and Reisinger, A. eds., 2007) [hereinafter IPCC, 2007 Synthesis Report] (stating that forestry activities account for 17.4% of global anthropocentric greenhouse gas emissions); See also G.J. Nabuurs et al., REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, Forestry Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change 541, 543 (B. Metz et al. eds. 2007) (stating that deforestation is the single most important source of carbon) [hereinafter IPCC, Mitigation]. Although some commentators have revised this figure since 2007, this figure represents the most recent scientific consensus published by the Inter-Governmental Panel on Climate Change (“IPCC”).

2. IPCC, Mitigation, supra note 1, at 544.

3. Although this mechanism is now known as REDD+ or REDD plus, for the sake of readability, it will be referred to throughout this article as REDD. The mechanism began as REDD, referring to “reducing emissions from deforestation.” United Nations Framework Convention on Climate Change, Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action, FCCC/CP/2005/Misc.1, at 2 (Nov. 11, 2005) [hereinafter Deforestation]. It then became known as REDD, referring to “reducing emissions from deforestation and degradation,” when degradation was added to its scope. See UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Decision 2/CP.13, Report of the Conference of the Parties on its Thirteenth Session, held in Bali from 3-15 December 2007, FCCC/CP/2007/6/Add.1, at 8 (March 14, 2008) [hereinafter Decision 2/CP.13]. It became known as REDD+ or REDD plus when its scope expanded so that it became, in its most recent form, “reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.” See UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Decision 4/CP.15, Report on the Conference of the Parties on its Fifteenth Session, held in Copenhagen from 7 to 19 December 2009, FCCC/CP/2009/11/Add.1, at 11 (March 30, 2010) [hereinafter Decision 4/CP.15].

4. These design questions include whether a REDD mechanism should be market-based or fund-based, whether credit should be awarded to projects or to countries, and how collateral harmful effects on biodiversity and indigenous peoples can be avoided. See, e.g., CHARLIE PARKER ET AL., THE LITTLE REDD+ BOOK (2009) (setting out many of the questions about design of a REDD+ mechanism and where the parties and various governmental and nongovernmental groups stand on those issues) [hereinafter The Little REDD+ Book]; MOVING AHEAD WITH REDD: Issues, Options and Implications (Arid Angelson ed., 2008); Claire Stockwell, William Hare, and Kirsten Macey,
on design questions at the international level. The focus implicitly assumes that REDD will be a mechanism embedded within hard international law instruments with international institutional oversight and infrastructure. As such, commentators presume REDD will be largely effective. This assumption is particularly strong for commentators concerned about biodiversity and deforestation because, historically, the international legal regime for biodiversity and forest protection has been made up of weaker international law, with fewer international legal commitments binding on states than the international legal regime for climate change. For these commentators in particular, then, REDD offers a promise of a harder system of international laws and with it, they generally hope, improvement in protection.

This article demonstrates that they are wrong. As REDD has been negotiated by parties to the United Nations Framework Convention on Climate Change (“UNFCCC”) since 2005, it has developed into a country-driven, voluntary mechanism with limited international oversight. Its scope has expanded so much that it is increasingly difficult to determine how to administer it. Not only is participation voluntary, but the manner of implementation is being made increasingly flexible and ad hoc. In short, at the international level, the parties are negotiating a soft law mechanism with severe implementation difficulties. In that sense, it has far more in common with the international legal regime that currently governs forests and biodiversity than it does with the hard law world of the international legal regime that governs climate change. The consequences of these developments in REDD’s negotiation are significant because the technical expertise and international oversight necessary to ensure that REDD will be effective will now be harder to achieve.

I also identify two significant problems that result from reliance on the standard story of REDD as an emerging hard international law mechanism: misdirected focus and misdirected accountability. The first problem I term misdirected focus. If we assume that a REDD mechanism being created within the UNFCCC will include strong international oversight and hard law principles, we will likely spend energy advocating specific design reforms at the international level while possibilities for improvement at the domestic level may go unnoticed. This is not to suggest that we should take our eye off the ball of the international level completely. However, we must not ignore the importance of the national level and even sub-national level of activity.

The second problem is misdirected accountability. Assuming that REDD is being developed at an international level and will involve international oversight could lead us to believe that accountability for its success or failure lies with the UNFCCC and related international bodies. Instead, accountability lies more heavily with national implementation bodies, private participants in the REDD mechanism, and sub-national actors.

These two problems result from the standard narrative of REDD as a hard international law mechanism. If we fail to understand the true story of REDD, they could undermine REDD’s ability to achieve the goals we have for it – climate change mitigation and biodiversity and forest protection. Failing to understand the true story of REDD could even lead REDD to become a cover for limited emissions reductions, weak forest protection, infringement of indigenous and local peoples’ rights, and harm to biodiversity.

The true story of REDD also has important lessons for international lawyers more broadly, as we consider the role of international law in global environmental problems. I address

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Designing a REDD mechanism: the TDERM triptych, in Climate Law and Developing Countries: Legal and Policy Challenges for the World Economy 151 (Richardson et al. eds., 2009).

these lessons in a separate article. Nevertheless, it is worth keeping in mind throughout this article that the true story of REDD suggests that the role of international law as a global body of supranational hard law may no longer present an accurate picture of the real face of international environmental law.

To uncover the true story of REDD, I examined the public statements and decisions of the countries that are party to the international legal regime on climate change between 2005 – when REDD was first proposed – to the end of 2012 – the time of writing this article. For my research, I examined the submissions of states parties to the climate change convention, official UNFCCC records of discussions about REDD meetings and conferences of these states parties, and the official decisions and reports that came out of those meetings and conferences. This article discusses two particular aspects of those negotiations: the changing scope of the REDD mechanism and the parties’ decisions about the level of international institutional oversight and support when it comes to implementation of REDD.7

In Part II of the article, I discuss the impetus for broad support for REDD, particularly among the biodiversity and forest protection community and the core assumption that underlies that support, namely that REDD is likely to provide a harder system of international law than other regimes that address biodiversity and forest protection. In Part III, I present the true story of REDD between 2005 and 2012, focusing on two particular issues: the expansion of the scope of REDD and the level of international oversight agreed to by the parties. In Part IV, I discuss the consequences of these developments for REDD’s likely effectiveness. I also discuss the two problems – misdirected focus and misdirected accountability – that result from the standard narrative of REDD as an emerging hard international law mechanism.

Those interested in REDD generally share a common desire for success in both climate change mitigation and biodiversity and forest conservation. This is true of commentators who are strongly in favor of REDD and those who are wary of it or opposed to it.8 Many commentators warn that the biggest threat to climate change mitigation and biodiversity would

7 I do not present any particular causal explanation for the story I present. For discussion analyzing the reasons for particular choices in the international climate change regime and the international forests regime, see Sjur Kasa, Anne T. Gullberg, and Gorild Heggelund, The Group of 77 in the International Climate Negotiations: Recent Developments and Future Directions, 8 INT’L ENVTL. AGREEMENTS 113 (2008); Emily Boyd, Esteve Corbera, Manuel Estrada, UNFCCC Negotiations (Pre-Kyoto to COP-9): What the Process Says about the Politics of CDM-Sinks, 8 INT’L ENVTL. AGREEMENTS 95 (2008); Radoslav S. Dimitrov, Hostage to Norms: States, Institutions and Global Forest Politics, 5(4) GLOBAL ENVTL. POLICIES 1 (2005); Deborah S. Davenport, An Alternative Explanation for the Failure of the UNCED Forest Negotiations, 5(1) GLOBAL ENVTL. POLICIES 105 (2005). While some of the reasons proposed in these articles to explain outcomes may also be applicable for REDD, resolving these questions is beyond the scope of this article.
8 Some groups oppose REDD completely, either because they believe REDD will fail to achieve the goals it is designed to achieve and could even undermine them or because they are very concerned about the effect of REDD on indigenous peoples or biodiversity or both. See, e.g., FRIENDS OF THE EARTH INTERNATIONAL, REDD Myths: a Critical Review of Proposed Mechanisms to Reduce Emissions from Deforestation and Degradation in Developing Countries, December 2008, available at http://www.foei.org/en/resources/publications/pdfs/2008/redd-myths; Global Alliance of Indigenous Peoples and Local Communities against REDD and for Life Calls for a Moratorium on Reducing Emissions from Deforestation and Forest Degradation (REDD+), Dec. 7, 2011, available at https://www.iucn.org/about/union/commissions/ceesp/what_we_do/wg/tger.cfm?8786/The-Global-Alliance-of-Indigenous-Peoples-and-Local-Communities-against-REDD. Fears over the effect of REDD on indigenous peoples and their rights in forests are warranted. They are, however, beyond the scope of this article.
be failure to implement REDD. This article counters that the biggest threat to climate change mitigation and biodiversity – and therefore to us – is for a REDD mechanism to go forward with a scope that is impossible to administer and with an institutional infrastructure that lacks standardized and supranational oversight. Yet this is the mechanism that is currently being created.

II. LINKING CLIMATE CHANGE, BIODIVERSITY, AND FORESTS

A. The Impulse to Link Climate Change and Forests

In 2005, Papua New Guinea and Costa Rica – two countries rich in forest cover – heralded a new way to think about involving forests in climate change mitigation. They offered a proposal to the parties to the UNFCCC that recognized deforestation as a source of greenhouse gas emissions. Instead of urging compensation for the creation of carbon sinks, a contentious approach that had been rejected for the Clean Development Mechanism of the UNFCCC, this proposal urged the international community to find a way to compensate countries for protecting their forests and limiting deforestation. As the proposal stated, with standing forests not currently economically valued and no incentive to protect, “communities must bear losses of the services from forests that are not currently valued economically, while globally, we all must assume the consequences of increased greenhouse gases in the Earth’s atmosphere.” This was the launch of the program that began as RED, Reducing Emissions from Deforestation, and has developed into REDD+, Reducing Emissions from Deforestation and Degradation, and the Role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks. For consistency, I refer to it throughout as REDD.

Commentators generally point to two reasons for enhancing the links between efforts to mitigate climate change and efforts to address biodiversity and forest loss globally. First, the science indicates that these issues are inextricably linked. Second, and related, commentators worry that failure to bring closer connection between international law addressing climate change and international law addressing biodiversity and forests will result in harmful collateral consequences for biodiversity and forests.


10 Deforestation, supra note 3, at 8, 11 (discussing how Papua New Guinea and Costa Rica are rich in biodiversity and susceptible to natural hazards and climate change and that “[i]t must be highlighted that our emphasis is carbon emissions—not ‘sinks’.”) (The proposal was supported by Bolivia, Central African Republic, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Dominican Republic, and Nicaragua.); See also William Boyd, Ways of Seeing in Environmental Law: How Deforestation Became an Object of Climate Governance, 37 ECOLOGY L.Q. 843, 844 (2010) [hereinafter Boyd, Ways of Seeing].

11 Deforestation, supra note 3, at 8; UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Report of the Conference of the Parties on its Seventh Session, held at Marrakesh from 29 October to 10 November, 2001, Part Two: Action Taken by the Conference of the Parties, FCCC/CP/2001/Add.1, at 43-44 (Jan. 21, 2002).

12 Deforestation, supra note 3, at 4.

13 See supra note 3.
First, scientifically, it makes sense to think about climate change and deforestation together. Global scientific consensus estimates that 17.4% of anthropogenic greenhouse gas emissions stem from forestry. Thus, curbing deforestation and forestry related emissions could significantly enhance the success of efforts to mitigate climate change. Beyond this, healthy tropical forests contribute to overall biodiversity, which has benefits for that biodiversity and the health of those ecosystems. It also can enhance our ability to adapt to climate change, set out as one of the goals of the UNFCCC. Biodiversity contributes to resilience, which in turn enhances a system’s capacity to adapt to change, even human-induced change. And, to bring the connections full circle, mitigation of climate change will also benefit biodiversity, since the effects of climate change are already being felt by species and ecosystems.

Second, there is increasing recognition that efforts within the international legal regime for climate change to curb greenhouse gas emissions could have harmful consequences for biodiversity. This is fueled by recognition that the design of instruments under the climate change regime can exacerbate conflicts between climate change mitigation goals and biodiversity protection goals. If handled well, however, the design of REDD could instead reduce those conflicts. A few examples can provide illustration.

First, efforts to reduce greenhouse gas emissions can cause harmful collateral effects on biodiversity even where those efforts are not focused on land use and forestry. Dams, for example, approved under the Kyoto Protocol’s Clean Development Mechanism for their

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14 See supra notes 1 and 2.
15 UNFCCC, supra note 5, art. 2.
17 See Secretariat of the CBD.
19 See van Asselt, Managing the Fragmentation of International Environmental Law, supra note 18, at 1238 (discussing ways in which REDD design questions will affect REDD’s impact on biodiversity and whether that impact will be harmful or beneficial); See also id. at 1238 n. 168 (emphasizing that, even beyond the examples the author elaborates in his article, in general the design of REDD matters for biodiversity); See also Savaresi, supra note 18 (discussing design issues for a REDD mechanism and their likely impact on biodiversity); Long, Global Climate Governance, supra note 18.
20 This article does not repeat the extensive literature documenting these potential conflicts, but highlights here a few examples by way of illustration. See generally supra note 18.
contributions to climate change mitigation, have come under attack by non-governmental organizations worried about their impact on biodiversity and on local peoples.21

Second, decisions about the design of mechanisms that expressly recognize the role of forests in carbon emissions can be critical. One example of this is the question of whether emission credits will be awarded to reforestation projects that are essentially monocultures replacing a forest ecosystem that has been previously destroyed by logging. Another is the question of whether the planting of new forests — afforestation — in areas that have not been traditionally forested will be rewarded even if that afforestation might have a harmful effect on the flora and fauna that was present before it began.22

With regard to REDD, commentators also worry that a REDD mechanism that focuses exclusively on carbon emissions without taking into account biodiversity could fail to protect biodiversity and even forests in areas that are not carbon intensive and therefore would not reap high carbon emissions credits. Leakage — the idea that limiting emissions in one area may result in emissions growing in another area — is a particular concern in this regard. Leakage can happen over time as well as geographical space. First, the design of any mechanism under the climate change regime must account for the possibility of leakage to ensure that net greenhouse emissions go down. Second, focusing on avoiding deforestation in high-carbon areas without paying attention to impacts on biodiversity could result in increased activity in low-carbon high-biodiversity areas, thus harming biodiversity even as greenhouse gas mitigation targets are being met.23

If those concerned about forests and biodiversity fail to participate in discussions about climate change mitigation efforts that deal directly with forests, the promise of co-benefits for biodiversity and forests could quickly turn into the realized fear of harmful collateral consequences. This worry is exacerbated by recognition that the international environmental law regime as a whole is internally fragmented.24 Differences among international legal regimes include differences in goal and differences in approach.25 For the climate change regime, the focus is on mitigation of climate change, as described in Article 2 of the UNFCCC.26 As Professor Harro van Asselt describes, even though negotiators in the climate change regime have slowly started to address the non-mitigation aspects of forests, the potential mitigation benefits of

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22 See Sagemüller, supra note 18.
23 Paulo A. Lopes, Is REDD Accounting Myopic?: Why Reducing Emissions from Deforestation and Forest Degradation Programs Should Recognize and Include Other Ecosystems and Services Beyond CO2 Sequestration, 11 SUSTAINABLE DEV. L. & POL’Y 25, 28 (2011) (arguing that the “focus on carbon concentration in biomass results in a preference for high-biomass ecosystems even if the low-biomass ecosystems has a higher conservation value pertaining to biodiversity, soil, and water, since the focus of REDD is on biomass concentration and not biodiversity.”); Strassburg et al., Global Congruence of Carbon Storage and Biodiversity in Terrestrial Ecosystems, CONSERVATION LETTERS, Vol. 3 Issue 2 (Dec. 17, 2009) (noting that a purely carbon-focused mechanism does not necessarily focus on forests where biodiversity conservation is most needed); Ebeling, supra note 9, at 37.
24 See van Asselt, Managing the Fragmentation of International Environmental Law, supra note 18; See also Richard Caddell, The Integration of Multilateral Environmental Agreements: Lessons from the Biodiversity-Related Conventions, 22 Y.B. INT’L ENVTL. L. 37 (2012).
25 Pontecorvo, supra note 18 (discussing the desire for harmonization among regimes within international environmental law because of the interconnectedness of environmental issues).
26 UNFCCC, supra note 5, art. 2 (providing that “[t]he ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve … the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”).
forests still provide the main rationale for the REDD mechanism.\textsuperscript{27} By contrast, the Convention on Biological Diversity ("CBD")\textsuperscript{28} treats forests in a more holistic manner, embedding their protection within the CBD’s ecosystem approach and emphasizing the multiple benefits that forests provide.\textsuperscript{29} With these differences in goal and method, those working to protect biodiversity and forests through the CBD cannot assume that the climate change regime will protect their interests. It makes sense to avoid collateral harmful effects on biodiversity by strengthening the links among the two regimes.\textsuperscript{30} Since REDD itself combines both issue areas, it also makes sense to ensure that REDD is designed with both interests in mind.

\begin{center} \textbf{B. The Promise of Hard Law} \end{center}

A third motivation for linking the climate change regime with the biodiversity and forest regime also runs through the literature on REDD, particularly the literature stemming from commentators with a particular interest in promoting the protection of biodiversity and forests. For these commentators, REDD seems to offer the possibility that incorporating biodiversity and forests into the climate change regime will result in more international oversight and binding international legal commitments regarding biodiversity and forests. This motivation carries with it the very assumption challenged by this article: the assumption that incorporating forests into the climate change regime will lead to hard law protections for forests that are embedded in an international legal institution. For that reason, it is worth fleshing out more fully here.

The motivation itself to bring biodiversity and forests into the climate change regime is understandable. The international legal regime governing biodiversity and forests is one of limited hard law obligations and substantial deference to state sovereignty and national implementation. Within international environmental law, this regime is considered to be weaker legally than the international legal regime for climate change.\textsuperscript{31} Within international law more broadly, it is far weaker than the international trade law regime.\textsuperscript{32} To elaborate on this, I focus here on aspects of the international legal regime for biodiversity and forests that could be relevant for forest protection and not on those instruments that are relevant for biodiversity and species protection but that do not implicate forests.

\begin{footnotesize}\begin{itemize}
\item[\textsuperscript{27}] Van Asselt, \textit{Managing the Fragmentation of International Environmental Law}, supra note 18, at 1224 & 1241.
\item[\textsuperscript{28}] Convention on Biological Diversity, 31 I.L.M. 818 (1992) [hereinafter CBD].
\item[\textsuperscript{29}] See van Asselt, \textit{Managing the Fragmentation of International Environmental Law}, supra note 18, at 1228; Savaresi, \textit{supra} note 18, at 103.
\item[\textsuperscript{30}] It also makes sense to increase synergies among the two regimes because funding available through REDD could increase capacity to protect biodiversity more generally. Cordula Epple et al., United Nations Environment Programme-World Conservation Monitoring Centre, \textit{Making Biodiversity Safeguards for REDD+ Work in Practice-Developing Operational Guidelines and Identifying Capacity Requirements, Summary Report}, at 15 (May 9, 2011) (arguing that processes related to the implementation of both the CBD and the biodiversity-related aspects of REDD+ could inform each other in order to enhance synergy).
\item[\textsuperscript{31}] Stuart R. Harrop and Diana J. Pritchard, \textit{A Hard Instrument Goes Soft: The Implications of the Convention on Biological Diversity’s Current Trajectory}, 21 GLOBAL ENVTL. CHANGE 474, 475 (2011); See also Natasha Gilbert, \textit{Biodiversity Hope Faces Extinction}, 467 NATURE 764 (2010) (documenting the different levels of attention given to biodiversity protection as a global priority compared with climate change and carbon emissions regulation).
\item[\textsuperscript{32}] Harrop, \textit{supra} note 31, at 475; \textit{Id.} at 476; CBD, \textit{supra} note 28, art. 22 (subjugating the CBD’s provisions to “the rights and obligations of any … existing international agreement” with the only exception for “a serious damage or threat to biological diversity”). See also Pascal Lamy, \textit{The Place of the WTO and its Law in the International Legal Order}, 17 EUR. J. INT’L L. 969 (2006).
\end{itemize}\end{footnotesize}
Regarding forests first, the international legal regime governing forests and deforestation is barely a legal regime in the sense that it barely contains any concrete legal obligations.\(^{33}\) Although deforestation was a topic of concern at the Rio Convention of 1992, any plan to include negotiations on a forest convention on the agenda was abandoned early on.\(^{34}\) The UNFCCC and the CBD were both concluded in Rio, while the only agreement to come out of Rio for forests was the *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests*, with limited participation.\(^{35}\) As its title shows, this agreement was non-binding.

Since Rio, new institutions and agreements regarding forests have not resulted in binding commitments to address forest conservation. Thus, despite the fact that there are over forty international organizations and over twenty international forest-related agreements\(^{36}\) addressing forests, which some argue has resulted in a complex international regime governing forests,\(^{37}\) that regime is largely based on soft law. Indeed, of these agreements, only those that address forests as a subset of their general work are hard law in the sense of looking like a traditional binding legal agreement between states.\(^{38}\) Further, even if the collection of forest agreements could be considered an international forest regime with some normative force, the consensus is that that regime has been ineffective in protecting forests.\(^{39}\)

For forests and biodiversity more generally, the CBD is the most holistic and, by that metric alone, important of the hard law instruments to govern.\(^{40}\) It is technically hard law because it is a legally binding treaty agreed to by states.\(^{41}\) The UN General Assembly has referred to it as the “key international instrument on biodiversity.”\(^{42}\) Yet, on the scale of hard versus soft legal commitments, the CBD falls at the softer end.\(^{43}\) The CBD has been cited as a possible example of soft law by some commentators because its obligations are broad and states

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33 Dimitrov, *supra* note 7, at 5; *See also* DAVID HUMPHREYS, LOGIAM: DEFORESTATION AND THE CRISIS OF GLOBAL GOVERNANCE 190 (2006) (describing an international legal regime for forests, albeit with limited hard law components); WILLIAM BOYD, *Climate Change, Fragmentation, and the Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage*, 32 U. PA. J. INT’L L. 457, 524 (2010) (“efforts to fashion a comprehensive international legal instrument for forests, which began in earnest during the early 1990s, have been a spectacular failure, founded on the fundamental conflict between the view of tropical forests as the "common heritage of mankind" and forests as "national patrimony," as well as the perennial inadequacy of donor country financing”) [hereinafter *Boyd, Fragmentation*]; *Boyd, Ways of Seeing*, *supra* note 10, at 863-65, 866, 888 n.144.

34 Dimitrov, *supra* note 7, at 7.
35 Dimitrov, *supra* note 7, at 8.
36 Long, *Global Climate Governance*, *supra* note 18, at 111.
37 Humphreys, *supra* note 33.
40 Humphreys, *supra* note 33, at 191.
42 Harrop, *supra* note 31, at 475.
party to the treaty have not accepted any identifiably concrete commitments. The treaty is highly deferential to state sovereignty over natural resources and its obligations generally direct parties to develop strategies and approaches domestically. Significantly, these obligations are qualified throughout by phrases like “subject to national legislation” and “as far as possible and appropriate.” The Convention’s monitoring and enforcement has been minimal and its effectiveness in terms of protecting biodiversity at the global level subject to question.

In the years since the CBD was negotiated, the parties have not chosen to turn the biodiversity regime into a regime with more binding commitments. In this regard, the parties have followed a different path from that followed in the UNFCCC. Both treaties can be considered framework treaties, establishing certain principles and laying the foundation for subsequent protocols to be negotiated that will provide for harder legal commitments by the parties. For the climate change regime, this happened with the negotiation of the Kyoto Protocol, which supplemented the broad provisions of the UNFCCC with specific, identifiable targets. Two protocols have been negotiated under the CBD, the Cartagena Protocol on Biosafety and the Nagoya Protocol on Access and Benefit-Sharing. While both are more concrete than the CBD and address important issues that can affect biodiversity protection, neither sets out concrete legal obligations for the parties that are directly about conservation and protection of biodiversity and forests. On questions related directly to in situ conservation of biodiversity, the CBD’s parties and institutions have focused on developing soft law instruments that are not backed by hard law obligations. Oversight of parties’ national implementation has traditionally been weak and lacking in substantive force.

Other hard law instruments in international law that address biodiversity protection and species protection have limited obligations or a narrow scope, or both. The Ramsar Convention on Wetlands, for example, whose scope covers some forests like mangrove forests, is another example of a technically hard law treaty that falls at the softer end of the spectrum because of its limited substantive obligations. These obligations consist primarily of exhortations for parties to

45 See, e.g., CBD, supra note 28, Preamble, arts. 3, 5, 8 & 14.
46 See CBD, supra note 28; See also Harrop, supra note 31, at 476 (giving additional examples of the qualifications contained throughout the CBD that limit the commitments the treaty imposes on states parties).
48 See Harrop, supra note 31.
51 See Harrop, supra note 31, at 476. For more detailed elaboration of the Nagoya Protocol and the Cartagena Protocol, see Morgera, supra note 47, at 16-21 & 35-37 respectively.
52 Harrop, supra note 47, at 479; See generally id. at 477-78 (detailing the CBD’s reliance on target-based approaches that are not backed up by hard legal commitments by or obligations for the parties).
53 Morgera, supra note 47, at 9.
plan and stay informed about the condition of wetlands within their boundaries, and the treaty relies heavily on procedural requirements for a soft kind of enforcement.\textsuperscript{55}

The Convention on International Trade in Endangered Species (“CITES”), another treaty with implications for forests, has hard law and firm commitments by states. In recent years, a number of timber species have been listed on CITES’ Appendices I and II, resulting in international regulation of trade in those species.\textsuperscript{56} Six species have been listed on CITES’ Appendix I, which effectively bans international trade, while thirteen have been listed on Appendix II, which requires regulation of international trade.\textsuperscript{57} In addition, efforts to crack down on illegal logging and international trade in CITES listed species has increased among a number of international and domestic enforcement bodies. The Conference of the Parties to CITES has also agreed to address timber trade in a programmatic sense. Yet CITES’ approach is narrowly targeted to a particular activity, species threatened by international trade and, as a result, is likely to target only a few individual species.\textsuperscript{58} It does not address the multiple and complex drivers of deforestation that may not even lead to threats to the timber species being forested. Indeed, not everyone involved in CITES believes that timber species should be a significant part of its agenda.\textsuperscript{59}

Thus, despite a burgeoning number of international instruments that address biodiversity at the international level,\textsuperscript{60} the overall international legal regime governing biodiversity and forests has limited hard legal force. For international proponents of biodiversity protection, the ability to point to hard law obligations in international law for the protection of biodiversity and, within that, forests, is limited.\textsuperscript{61}

By contrast, the international legal regime governing climate change seems to carry a weight and significance in international law that the biodiversity and forests regime hasn’t been able to match.\textsuperscript{62} The Kyoto Protocol, negotiated under the auspices of the UNFCCC contains binding commitments on many of the parties and embodies traditional hard international law in

\textsuperscript{55} See id., arts. 2 & 3; See also Annecoos Wiersema, A Train Without Tracks: Rethinking the Place of Law and Goals in Environmental and Natural Resources Law, 38 ENVT'L. L. 1239, 1285 (2008) (discussing the limited obligations on the parties to the Ramsar Convention and the ways in which the Ramsar Convention has developed more flexible approaches to enforcement, such as shaming).


\textsuperscript{58} For some countries, illegal logging is of paramount concern in their efforts to protect forests. However, overall, the primary cause of deforestation is conversion to agricultural land.

\textsuperscript{59} Soledad Aguilar, On Caviar, Sharks, and Mahogany – Can CITES Promote Sustainable Management?, 37 ENVTL. P. & L. L. 376 (2007) (discussing key questions from the fourteenth Conference of the Parties when a debate arose over how to approach sustainable management and whether to include a specific focus on timber species in the strategic vision to guide CITES from 2008-2013).

\textsuperscript{60} See Caddell, supra note 24.

\textsuperscript{61} Even those obligations that do exist are deemed ineffective by many commentators. Biodiversity targets under the CBD have not been met. See CBD 2010; See also Harrop, supra note 31; Morgera, supra note 47; Boyd, Ways of Seeing, supra note 11; Long, Global Climate Governance, supra note 18, at 319 (“If strong mechanisms for the protection of biodiversity and primary forest habitats existed in international environmental law, REDD’s impact on biodiversity would be less significant.”); Id. at 317 (“REDD holds the promise of reducing emissions at low cost while simultaneously curbing poverty, fostering sustainable development, and preserving biodiversity.”).

\textsuperscript{62} Tseming Yang & Robert V. Percival, The Emergence of Global Environmental Law, 36 ECOLOGY L.Q. 615, 616.
treaty form. The Protocol’s market-based approach has generated a bureaucracy to implement and monitor the market. It has also resulted in a functioning market that carries its own momentum. Legitimate concerns exist about the effectiveness of the Protocol’s commitments and mechanisms and about whether binding commitments will be renewed beyond 2012. Nevertheless, the history of the regime’s approach and the amount of international effort spent on climate change overshadow the soft law approach of the international legal regime governing biodiversity and forests.

As a result, those frustrated with the biodiversity and forests regime are increasingly looking to the climate change regime to provide more protection. As Professor Andrew Long puts it, the climate regime is “the last best hope for improving tropical forest management.” In this vein, REDD proponents have consistently invoked the co-benefits to biodiversity that could result from successful implementation of REDD.

C. The Assumption behind the Hopes for REDD

This article tests and challenges the underlying assumption that this third motivation for linking the two regimes is premised on. The literature seems to assume implicitly that incorporating forests into the climate change regime will result in forests being brought into a global regime with the attributes of hard law, global governance mechanisms, and implementation and enforcement oversight. The overall assumption about REDD and the course of its negotiation is that the result will be a strong international legal mechanism. For some commentators who worry about harmful effects on biodiversity, the fear is precisely that the climate change regime will be so strong that it will override biodiversity protection goals.

The assumption makes sense logically. It was my starting hypothesis when I began researching the story of REDD’s negotiation. In addition to the positive views of the biodiversity and forest conservation community discussed above, the climate change community, developed countries, and developing countries also all have good reason to support REDD. The

63 Kyoto Protocol, supra note 49.
64 Indeed, Professor William Boyd describes the processes that allowed the issue of deforestation, long treated as an issue for sovereign states to deal with inside their borders, to be approached for REDD “as components of the global carbon cycle and as providers of global public goods.” Boyd, Ways of Seeing, supra note 10, at 880. Boyd describes methodological developments and technical approaches that appear to echo the global, centralized approach of carbon markets that the climate change regime itself embodies and argues that the process of incorporating forests into the climate change regime was itself a process of decontextualizing forests. Id.
65 See Boyd, Fragmentation, supra note 33, at 524 (arguing that “the recent support for a climate policy approach to deforestation stems in part from a recognition that past efforts to deal with the problem have not succeeded and a growing sense that deforestation and land use must be critical components of any climate protection effort given their significant contribution to global GHG emissions”); van Asselt, Integrating Biodiversity, supra note 9, at 143 (“Given the failure of the international community to provide for adequate protection of the world’s forests, the biodiversity regime could arguably ‘hitch a ride’ with the climate regime in a time where climate change is high on the agenda of policy makers. Drawing attention to the overlapping issues could lead to prioritization of climate change activities with positive spillovers for biodiversity protection.”).
66 Long, Global Climate Governance, supra note 18, at 99; See also Boyd, supra note 10, at 845; See also Ebeling, supra note 9, at 36 (“Compared to the status quo of forest governance in most developing countries, almost any international REDD scheme is likely to entail positive biodiversity and social impacts.”).
67 See, e.g., Secretariat, CBD.
68 See references supra note 18. See also Boyd, Ways of Seeing, supra note 10, at 878, 906-08 (describing the incorporation of the deforestation problem into the climate change regime as a process of removing forests from their context, simplifying, reducing, and translating tropical forests into compliance carbon).
mechanism promises to address an important source of greenhouse gas emissions, benefiting mitigation efforts and also reducing the burden on developed countries.69 And, for developing countries, it offers the promise of capacity-building and resource transfers to help them with conservation and efforts to stop deforestation.70

This sense of the importance of REDD is reinforced by the feeling of success generated by outcomes on REDD from Conferences of the Parties. Parties to the UNFCCC and Kyoto Protocol have struggled to reach agreement on binding commitments for mitigation of climate change at successive meetings, generating eye-catching headlines of gloom in the popular media and among participants; at the time of writing, the outlook for the Kyoto Protocol looks relatively poor.71 At those same meetings, parties have agreed to decisions on REDD and have continued to work on its development, giving the appearance that momentum on REDD is proceeding in spite of failures in the broader climate change negotiations.72

However, my review of the negotiation history of REDD between 2005 and 2012 indicates that this assumption is flawed. For my research, I reviewed the submissions of the parties to the UNFCCC, the work of the subsidiary bodies assigned to work on REDD, the main issues of contention at meetings, and the outcomes of those meetings in the form of reports and decisions. My research shows that as REDD is being negotiated, it has developed into a mechanism that resembles more the international legal regime for biodiversity and forests than it does the model of a hard law regime that proponents of REDD seem to assume it will be. As such, it is likely to fail to achieve its two main goals of emissions reduction and forest conservation.

This article focuses on two main themes in the negotiations about REDD from 2005 to 2012. The article first discusses the way in which the scope of REDD changed over the years from a mechanism focused on deforestation to one incorporating conservation, sustainable forest management, and conservation of carbon stocks. This change is consistent with a desire to promote biodiversity and forest protection as co-benefits of REDD. However, my research shows that the effect of the expanded scope was likely to change the way in which REDD would operate, with significant implications for the relationship between international and national levels of governance.

Second, the article discusses the way in which the parties have addressed the role of international institutions, both governmental and nongovernmental, for purposes of implementation and oversight of a REDD mechanism. As REDD has been developed, the parties have gradually chipped away at the level of formal international oversight in a number of ways. My discussion documents those changes between 2005 and 2012.

My findings matter precisely because, as commentators argue, the design of REDD will matter for its effectiveness both for climate change mitigation and for achieving the co-benefits of biodiversity and forest protection. This does not mean that the work on design of REDD at the international level is not important. This article should be considered a supplement to the

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70 Deforestation, supra note 3.
71 See EARTH NEGOTIATIONS BULLETIN, Summary of the Doha Climate Change Conference: 26 November – 8 December 2012, Vol. 12 No. 567, at 26 (Dec. 11, 2012) (observing that while a second commitment period under the Kyoto Protocol was set to begin in January 2013, some countries had not renewed the commitments they had undertaken under the Kyoto Protocol’s first commitment period).
important work on REDD design at every level. Nevertheless, if the negotiations of the parties about REDD are not leading to a mechanism that resembles a centralized, hard law mechanism, then design choices will have to account for this reality. Ultimately, this means renewed attention will have to be paid to the role of national and sub-national governance bodies.

III. THE TRUE STORY OF REDD’S NEGOTIATION: 2005-2012

A. The Beginning

In 2005, Papua New Guinea and Costa Rica shifted the existing debate about involving forests in climate change mitigation with a proposal to the parties of the UNFCCC designed to recognize deforestation as a source of carbon emissions.73 This was the launch of the program that began as RED – Reducing Emissions from Deforestation – and has developed into REDD+ – Reducing Emissions from Deforestation and Degradation, and the Role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks in Developing Countries.

The proposal itself highlighted a number of design questions to be addressed. For example, it addressed the question of whether a REDD scheme should be linked to carbon credit markets or through some other kind of funding mechanism. Papua New Guinea and Costa Rica favored a market-based approach.74 It also highlighted some technical complexities,75 while also acknowledging the technical advances that could allow this to work.76 The proposal raised the question of whether this should be done through a separate optional protocol or through the Kyoto Protocol, setting the stage for a consideration of whether a REDD mechanism would take the form of a binding international instrument.77 The proposal began the discussion about what relation this mechanism would have to binding emissions limits and the role of developing countries in emissions reduction goals.78 The proposal also put a toe into the water about whether emissions reductions should be calculated on a national basis or a project basis, itself preferring a national approach in order to address concerns about leakage.79 With this proposal, the stage was set for the parties to the UNFCCC to elaborate what a mechanism addressing emissions from deforestation would look like.

73 Deforestation, supra note 3, at 2, 8 & 11 (discussing how Papua New Guinea and Costa Rica are rich in biodiversity and susceptible to natural hazards and climate change and that “[i]t must be highlighted that our emphasis is carbon emissions—not ‘sinks’.”) (The proposal was supported by Bolivia, Central African Republic, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Dominican Republic, and Nicaragua.); See also Boyd, Ways of Seeing, supra note 10, at 894; van Asselt, Managing Fragmentation in International Environmental Law, supra note 18.
74 Deforestation, supra note 3, at 7 (developing countries are prepared to stand accountable for their contributions provided they have access to the international markets, because that is what is fair and equitable); Id. at 9 (“Properly harnessed, the carbon emissions market can monetize environmental resources and capitalize sustainable development.”).
75 Deforestation, supra note 3, at 9.
76 Deforestation, supra note 3, at 4 & 9; See also Boyd, Ways of Seeing, supra note 10, at 897.
77 Deforestation, supra note 3, at 8.
78 Deforestation, supra note 3, at 3 (noting that there is currently no way for developing countries to engage with the Kyoto Protocol for emissions reductions generated through the reducing deforestation rates); Id. at 7 (developing countries are prepared to stand accountable for their contributions provided they have access to the international markets, because that is what is fair and equitable).
79 Deforestation, supra note 3, at 9.
In the years since then, the parties have paid a lot of attention to the design of REDD, including the questions raised in original proposal. In doing so, they have developed a mechanism that is already being partly implemented through pilot projects and has generated its own website to act as a clearinghouse of information. But it is not clear that even those pilot projects are likely to achieve what REDD purports to promise.

This Part focuses on two particular aspects of these negotiations between 2005 and 2012, examining first the expanding scope of REDD during these years and, second, the way the parties have dealt with questions about the role of international oversight in REDD. Both of these aspects are critical to the ability of REDD to achieve its goals. As the discussion in the next section shows, the scope of REDD is inextricably connected to how easy or difficult it will be to implement. The level of international oversight implicates our ability to ensure that REDD is actually achieving its goal of emissions reduction and forest protection without undermining indigenous and local peoples’ rights and biodiversity protection.

B. From RED to REDD+: Adding Complexity

2005-2006: Starting with Deforestation

When Costa Rica and Papua New Guinea first proposed their approach, it was based on a relatively simple model of compensation flowing to developing countries for decisions to limit deforestation. The UNFCCC definition of a source of carbon emissions cited in this proposal left open the possibility of including more forestry activities into the definition. Nevertheless, the focus of the proposal was on deforestation – rather than degradation of forests or selective logging in forests – and on compensation for limiting that kind of deforestation:

In many developing nations, forests are historically clear cut by outside interests. Rains then wash the thin soils from the hills into the sea, ensuring that the hills will remain unproductive, polluting rivers and damaging the coastal areas and coral reefs. Without question, deforestation carries far-reaching environmental, economic and social impacts.

Even with a focus on deforestation alone, the apparent simplicity of Papua New Guinea and Costa Rica’s proposals belied the complexity of the problem of deforestation. As country party submissions in 2006 noted, the drivers of deforestation are complex, and attempts to stop illegal logging had not always been fruitful.

80 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE Art. I(9) (2013) available at http:// unfcc.int/essential_background/convention/background/items/2536.php (defining a source as “any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.”); See also Deforestation, supra note 3, at 7.

81 Deforestation, supra note 3, at 5; See also id. (“Deforestation generates carbon emissions through the degradation, decay and burning of wood, debris, and organic soil matter. When deforestation is the result of commercial logging, approximately one-third of sequestered carbon is released into the atmosphere within five years… [e]missions are more rapid when caused by land-use activities that involve clear-cutting, for example agriculture or road-building”); See also id. at 9 (calling for the establishment of national deforestation baseline rates).

82 See UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technological Advice, Issues Relating to Reducing Emissions from Deforestation in Developing Countries and Recommendations on any Further Process, Submissions from Parties, FCCC/SBSTA/2006/MISC.5, at 74 (Apr. 11, 2006) (submission from Gabon) [hereinafter SBSTA, Submissions from Parties, 2006]; Id. at 118 (submission from United States); UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technical Advice, Issues Relating to Reducing Emissions from Deforestation in Developing Countries and
Yet with this limited scope, the proposal could also observe that technical concerns about how to measure deforestation and develop baselines against which decisions not to cut down forests could be measured could be addressed. The proposal observed that satellite-based remote sensing technologies in conjunction with ground-truthing allowed scientists to “detect and map tropical deforestation.” The proposal also observed that “[i]n recent years these technologies and methodologies have improved to the extent that deforestation can be tracked at a relatively fine scale of resolution, and in real time.”

Throughout 2006, in the early stages of support for Papua New Guinea and Costa Rica’s proposals, this narrow scope remained. At the same time, parties observed that the methodological and technical complexities of measuring avoiding emissions from deforestation were not insurmountable given technological advances. As parties commented on the proposal, a few began to refer to the role of this mechanism in supporting sustainable forest management, but with limited elaboration of how a model designed to compensate for limiting deforestation would support active management practices working towards sustainable forests. Indeed, although Malaysia supported “global efforts to curb deforestation and to provide incentives for reducing deforestation and forest degradation,” they also advocated a “conservative and cautious approach … to ensure that a clear and fair approach is developed that will address the issues dealing with leakage, permanence and additionality…” And while several countries referred to the benefits that this scheme would have for biodiversity and other issues, these were treated as secondary benefits, rather than the primary goal.

In 2006, then, the focus of the parties in designing a REDD mechanism was still on deforestation, with secondary benefits for the promotion of sustainable forest management and

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Recommendations on any Further Process, Addendum, FCCC/SBSTA/2006/MISC.5/Add.1, at 3 (May 10, 2006) (submission from Chile) [hereinafter SBSTA, Submissions from Parties, Addendum, 2006]; Id. at 9 & 10 (submission from Switzerland).

See SBSTA, Submissions from Parties, 2006, supra note 82, at 54 (submission from Bolivia, Costa Rica, Nicaragua, Papua New Guinea).

Deforestation, supra note 3, at 4; See also id. at 9 (“With present satellite technology, remote-sensing technologies may be applied with the necessary accuracy and cost effectiveness.”).

See SBSTA, Submissions from Parties, 2006, supra note 82. See also Boyd, Ways of Seeing, supra note 10.

See SBSTA, Submissions from Parties, 2006, supra note 82, at 11 (submission from Bolivia) (arguing that degradation activities should also be included); Id. at 7 (submission from Austria on behalf of the European Community); Id. at 94 (submission from Malaysia); SBSTA, Submissions from Parties, Addendum, 2006, supra note 82, at 9 (submission from Switzerland).

SBSTA, Submissions from Parties, 2006, supra note 82, at 94 (submission from Malaysia).

A number of countries expressly stated that the goal should be reducing emissions, even as they recognized the benefits REDD could have for other concerns. See SBSTA, Submissions from Parties, 2006, supra note 82, at 28 (submission from Bolivia, Costa Rica, Nicaragua, Papua New Guinea) (recognizing additional benefits beyond emissions reductions); Id. at 68 (submission from El Salvador) (recognizing additional benefits beyond emissions reductions); Id. at 71 (submission from Gabon et al.) (recognizing that deforestation is a result of complex drivers, but urging that the parties not delay in establishing a REDD mechanism and urging also that parties not undermine emissions reductions requirements by developed countries); Id. at 88-89 (submission from Indonesia) (recognizing the benefits of reducing climate change’s negative impacts, promoting conservation of natural forest and biological diversity, and urging the parties to keep the mechanism simple and integrate it into the climate change regime); Id. at 99 (submission from Norway) (stating that a mechanism’s primary goal should be combating climate change, but noting that there are also other benefits that can be gained); Id. at 103 (submission from Panama et al.) (noting the synergy of climate change emission reduction goals with biodiversity goals); Id. at 110 (submission from Peru et al.) (noting the real benefits for climate that this mechanism could bring and urging the parties not to delay developing it). Cf. id. at 4 (submission from Australia) (urging the parties to be careful and not to move too fast).
biodiversity and limited expression of support for including forest degradation. This relative simplicity was about to change.

2007: Adding Degradation

In May 2006, the UNFCCC’s Subsidiary Body for Scientific and Technological Advice ("SBSTA") held workshops on REDD and included in the list of topics “enhancing sustainable forest management.”89 By August 2006, the SBSTA had produced a background paper that discussed the various options for monitoring of forest cover change and carbon stock change.90 In discussing these options, the SBSTA was already introducing questions about the role of forest degradation in a REDD scheme. Although forest cover change would only be connected to deforestation, carbon stock change could also occur as a result of degradation of forests. The SBSTA’s paper also explored the link between avoiding deforestation and promoting sustainable forest management:91

The approach to reducing deforestation rates has been focused on supporting conservation initiatives and sustainable forest management (SFM). While the first focuses on preserving forest ecosystems and limiting exploitation activities, the second acknowledges the need for communities to directly benefit from goods and services from these ecosystems in a way that it can be sustained into the future. Both approaches recognize the importance of forests for future generations.92

At the same time, the SBSTA’s background paper observed the implications of looking at degradation for purposes of monitoring and measuring that degradation. The paper observed the difficulty of getting good information on forest degradation with remote sensing imagery, which is itself significantly cheaper than more on-the-ground measurement tools.93

In 2007, the submissions of the parties seemed to call for a broader scope for REDD, connecting forests with ecosystem services.94 In 2007, Chile raised “forest degradation” as “a concern that requires further attention.”95 As Malaysia captured it:

89 United Nations Framework Convention on Climate Change, Subsidiary Body for Scientific and Technological Advice, Reducing Emissions from Deforestation in Developing Countries, Draft Conclusions Proposed by the Chair, FCCC/SBSTA/2006/L.8, at 1-2 (May 23, 2006).
92 Id.
94 See, e.g., United Nations Framework Convention on Climate Change, Subsidiary Body for Scientific and Technological Advice, Views on the Range of Topics and other Relevant Information Relating to Reducing Emissions from Deforestation in Developing Countries, Submissions from Parties, FCCC/SBSTA/2007/MISC.2, at 17 (Mar. 2, 2007) (submission from Bolivia et al.) (“[F]orest-based ecosystem services need to be recognized and valued by the international community in order to allow developing countries with forests to capitalize these..."
Both total protection and sustainable forest management practices should be considered as positive practices to avoid deforestation. … In formulating appropriate mechanisms on positive incentives for reducing emissions from deforestation in developing countries, Malaysia believes that it should be voluntary, flexible, and offer a range of incentives that would be applicable to the wide variety of forestry environments, management regimes and socio-economic and development conditions of developing countries.96

Thailand, also, expressed the desire to include degradation in the scheme, by allowing degradation to be part of any context-based definition of forest.97 Indonesia’s proposed definition of deforestation included degradation, and elaborated: “As the consequence of adopting this definition, voluntary actions done by developing countries which include (i) enrichment planting in secondary forests, (ii) targeted emission reduction through combating illegal logging and fires, and (iv) conserving carbon through forest conservation, should be eligible for the compensation.”98

Indeed, Indonesia’s elaboration explains why there might have been a push to expand the scope of REDD. Referring to other international agreements, binding and non-binding, that support sustainability and forest protection, Indonesia argued:

While each convention and/or agreements or forum emphasize the importance of maintaining the sustainability of the resource in providing goods and services, non [sic.] of these agreements provide adequate economic incentives that could encourage country which own the forest voluntarily doing so. For example, SFM which is dealt in [International Tropical Timber Organization, World Trade Organization, and United Nations Forum on Forests] does not receive market incentives, rather, the requirement to practice SFM is more as non-tariff barriers for many producer (mostly developing) countries.99

Vanuatu wanted to incorporate degradation credits into their scheme also, so that deforestation and degradation credits would account for 20% of the market for emissions because that is what they contributed to emissions in 2007.100 Despite taking a completely different approach to Vanuatu on the question of markets versus fund-based approaches to REDD, Tuvalu also supported including degradation in the mechanism.101

The question of whether or not to include degradation into REDD is also connected the question of who should set the definitions and the role of the international, a theme addressed below, but also running throughout the discussion on the scope of REDD. For those in favor of national definitions in 2007, one argument was that “this could enable Parties to include or services on a voluntary basis.”) [hereinafter SBSTA, Submissions from Parties, 2007]; See also id. at 62 (submission from Japan) (echoing interest in sustainable forest management).

95 Id. at 25 (submission from Chile).
96 Id. at 66 (submission from Malaysia).
97 Id. at 81 (submission from Thailand).
99 Id. at 11 (submission from Indonesia).
100 SBSTA, Submissions from Parties, 2007, supra note 94, at 88 (submission from Vanuatu).
101 SBSTA, Submissions from Parties, Addendum, 2007, supra note 98, at 16 (submission from Tuvalu).
exclude various elements in their approach for estimating reduced emissions from deforestation, such as degradation and non-CO2 gases, depending, as appropriate, on previous approaches used.\textsuperscript{102}

Yet the desire to include degradation in the scope of a REDD mechanism was not universal. In summarizing the second workshop on REDD, the UNFCCC Secretariat reported that while there was common recognition of the importance of forest degradation and some participants highlighted the importance of considering forest degradation in any arrangement, some participants were more cautious about expanding the scope of REDD. In particular, some participants “cautioned that estimating and verifying emissions from forest degradation is complex and presents many challenges, for example, in terms of definitions, methodologies and monitoring, and in estimating historical reference rates.”\textsuperscript{103}

The result of this impasse was a shift in focus to try to resolve the methodological problems raised by expanding REDD’s scope. This is a reasonable approach. If the primary reason not to include forest degradation is purely one of complexity, that reason can be overcome by resolving the complexity with enhanced technological capacity at the international level that is shared with the countries that will need it. Yet this neat ducking of the problem is itself illustrative. The addition of complexity that came with adding degradation to the equation is an example of a shift away from the relatively simple accounting that was envisioned in early submissions by the parties in 2006, where methodological problems were not deemed to be insurmountable. As layers were added to REDD’s scope, complexity was added, and methodology began to prove harder to address.

Indeed, despite the consensus on the physical relationship between forest degradation and deforestation, and despite the contribution of forest degradation to carbon emissions, including degradation and, beyond that, conservation, was still highly contentious in May 2007 as the SBSTA convened its Twenty-Sixth Session. Going into the meeting, the SBSTA’s draft decision contained a number of bracketed statements, signifying how little the parties actually agreed on at this stage.\textsuperscript{104} Disagreements included the question of whether to address stabilization and conservation, legal and illegal logging, displacement of emissions at the international level, and problems with definitions, particularly forest degradation.\textsuperscript{105} When compromise was reached, the parties agreed to put a reference to the need to address forest degradation into the preambular section of the decision,\textsuperscript{106} but important differences remained on the inclusion of forest stabilization and conservation.\textsuperscript{107} And degradation was still not an official part of the title of the REDD mechanism.

\begin{thebibliography}{9}
\bibitem{103} \textit{Id}. at 14, para. 69. \textit{See also id}. at 14, paras. 66-70.
\end{thebibliography}
Nevertheless, by the time the parties got to the Conference of the Parties (“CoP”) at Bali in December 2007, the SBSTA’s draft decision contained a reference to degradation both in the preamble and in the main body of the decision, as well as a reference to sustainable forest management. When the parties to the UNFCCC adopted the Bali Action Plan, the parties also adopted the first decision on reducing emissions from deforestation in developing countries, Decision 2/CP.13. Like the draft going into the CoP, degradation was still not in the title of Decision 2/CP.13, but degradation was included in both the preamble and the text. Thus, the preamble, as well as acknowledging “the contribution of the emissions from deforestation to global anthropogenic greenhouse gas emissions,” acknowledges that forest degradation also leads to emissions, and “needs to be addressed when reducing emissions from deforestation.” The preamble also recognizes the complexity of the problem, different national circumstances and the multiple drivers of deforestation and forest degradation. The Decision itself includes the phrase “and forest degradation” whenever it refers to deforestation, without differentiating between the two except where it refers to methodological questions regarding the calculation of greenhouse gas emissions.

On sustainable forest management, the Decision “encourages Parties to explore a range of actions, identify options and undertake efforts, including demonstration activities, to address the drivers of deforestation relevant to their national circumstances, with a view to reducing emissions from deforestation and forest degradation and thus enhancing forest carbon stocks due to sustainable management of forests.” The insertion of this paragraph was itself a response to the dispute between the parties as to whether to include conservation and enhancement of forest carbon stocks within the scope of REDD. In addition, the Annex to Decision 2/CP.13 refers to the need for demonstration activities, supported in the decision to be consistent with “sustainable forest management,” and referred to the UN Forum on Forests, UN Convention to Combat Desertification, and the Convention on Biological Diversity. This can be seen as both a worthwhile nod to the need for REDD to be consistent with other international concerns, and as a signal that sustainable forest management was also to be an important piece of the REDD puzzle.

Not only did the scope of REDD begin to expand at the UNFCCC CoP of 2007, but the forum for consideration of REDD design shifted as well. The Bali Action Plan, which put in place a process for long-term cooperative action under the UNFCCC generally, also moved certain aspects of the REDD discussion away from the SBSTA and into the process for long-term cooperative action set up through that decision. The Ad Hoc Working Group for Long-Term Cooperative Action (“AWG-LCA”) would now consider, among other things, “policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable

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109 Decision 2/CP.13, supra note 3, preamble (emphasis added).

110 Id. at paras. 6 & 7(a).

111 Id. at para. 3.

112 EARTH NEGOTIATIONS BULLETIN, Summary of the Thirteenth Conference of Parties to the UN Framework Convention on Climate Change and Third Meeting of Parties to the Kyoto Protocol: 3-15 December 2007, Vol. 12, No. 354, at 7 (Dec. 18, 2007) [hereinafter ENB, Summary of CoP 13]. India, Bhutan and others were in favor; Brazil, the EU, and others opposed; EARTH NEGOTIATIONS BULLETIN, COP and COP/MOP 3 Highlights: Tuesday, 11 December 2007, Vol. 12 No. 351, at 1 (Dec. 12, 2004).

113 Decision 2/CP.13, supra note 3, at 11.
management of forests and enhancement of forest carbon stocks in developing countries.” 114 The SBSTA would remain the site of discussions about methodology and technological concerns relating to REDD. 115

The scope of the AWG-LCA’s mandate with regard to a REDD mechanism was broader than that of the Decision 2/CP.13, negotiated under the auspices of the SBSTA, because it included a reference to degradation and also referred to “the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries,” albeit separated by a semi-colon. But not everyone agreed yet with this expanded scope. Brazil had put forward a proposal during the discussion about long-term cooperative action that had a fairly simple approach: “Its main objective is the development of an arrangement under the UNFCCC process aimed at providing positive incentives for the voluntary reduction of emissions from deforestation in developing countries in relation to a national reference emission rate.” 116 Brazil’s proposal focused only on deforestation and baselines based on deforestation and contained no reference to forest degradation, conservation, or maintenance of carbon stocks. 117


In the wake of the parties’ first CoP decision on REDD in December 2007 and the Bali Action Plan, the door was now open for discussion about including more than just deforestation in a REDD mechanism. As Colombia and India pointed out in submissions to the SBSTA in 2008, the CoP decision contained three new concepts to add to deforestation and degradation: sustainable management of forests; enhancement of carbon stocks, also expressed as increase in forest cover; and forest conservation. 118

As India expresses it, India “would seek positive incentives for enhancement of carbon stocks as well as for maintenance of baseline stocks as a consequence of following the policy option of conservation, sustainable management of forest, and increase in forest cover.” 119 This move is significant. On this approach, compensation would be made available for the use of forests as a form of sink, as well as reducing emissions from certain uses of the forests. As a result, the methodological concerns about calculating emissions and avoided emissions for the purposes of funding or credits became sharper again. Further, not every country was as keen on

118 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technological Advice, Views on Outstanding Methodological Issues Related to Policy Approaches and Positive Incentives to Reduce Emissions from Deforestation and Forest Degradation in Developing Countries, Submissions from Parties, FCCC/SBSTA/2008/Misc.4, at 7 (Apr. 22, 2008) (submission from Colombia) [hereinafter SBSTA, Submissions from Parties, 2008]; Id. at 27 (submission from India).
119 Id. at 27 (submission from India); See also id. at 29 (submission from Nepal) (arguing in favor of rewards for sustainable forest management); Id. at 52 (submission from Sri Lanka) (arguing in favor of including sustainable forest management and, more specifically, conservation into the scheme).
the inclusion of sustainable forest management. As Slovenia noted in their submission on behalf of the European Community ("EC"), even if a connection exists between sustainable forest management and the reduction of deforestation and degradation, it would also be important to understand the causes of deforestation.\textsuperscript{120} Such a step would not require REDD to have an expanded scope.

Yet at CoP 14 in 2008, several parties pushed to make sustainable forest management and conservation more prominent by removing a semi-colon between, on the one side, deforestation and degradation, and on the other, sustainable forest management and conservation.\textsuperscript{121} The semi-colon was changed to a comma, a victory in the eyes of some.\textsuperscript{122} The methodological questions surrounding these shifts continued to burn and the draft conclusions from the meeting recommended that a future expert meeting include methodological issues relating “to the role and contribution of conservation, sustainable management of forests, changes in forest cover and associated carbon stocks and greenhouse gas emissions and the enhancement of forest carbon stocks to enhance action on mitigation of climate change and to the consideration of reference levels.”\textsuperscript{123}

Measuring conservation and achievements in sustainable forest management is in itself more complex than measuring whether an area has been deforested, either for forest products or due to conversion for agriculture or other land uses. Beyond that, measuring the carbon stock maintained or enhanced by conservation and sustainable forest management is even more complex. As Brazil noted,

\begin{quote}
[t]he assessment of incremental changes in carbon stock due to sustainable management of forests cannot rely directly on the use of remotely sensed data and require substantial ground measurements and should not be limited to the assessment of incremental changes but should also assess decreases in carbon stock that can also result from the sustainable management of forests. The most difficult aspect related to sustainable management of forest relates to the separation of the effects of sustainable management in the changes (positive and negative) in the carbon stocks from change induced by natural, indirect, seasonal, and age dynamic effects (factoring out). Some of these effects can be more easily estimated than others (e.g., age dynamics), but still require intensive use of other, complimentary, data.
\end{quote}

At the SBSTA’s mid-year meeting in 2009, a heavily bracketed text of a draft CoP decision emerged. As part of the discussion, on monitoring, Earth Negotiations Bulletin reported that discussions addressed whether different methodologies would be required for REDD versus

\begin{footnotesize}
\begin{enumerate}
\item Id. at 48-49 (submission from Slovenia on behalf of the European Community).
\item \textsc{Earth Negotiations Bulletin, Summary of the Fourteenth Conference of Parties to the UN Framework Convention on Climate Change and Fourth Meeting of Parties to the Kyoto Protocol 1-12 December 2008, Vol. 12 No. 395}, at 6 (Dec. 15, 2008).
\item Id.
\item \textsc{United Nations Framework Convention on Climate Change, Subsidiary Body for Scientific and Technological Advice, \textit{Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action}, Draft Conclusions Proposed by the Chair, FCCC/SBSTA/2008/L.23, at 2 (December 10, 2008)}.
\end{enumerate}
\end{footnotesize}
REDD-plus, picking up on the fact that remote sensing alone would not detect degradation.\textsuperscript{125} At this point, the REDD negotiating group might already be considered to be speaking a different language from the other participants in the climate change regime.\textsuperscript{126} Nevertheless, by the end of the SBSTA meeting, the parties had agreed to include, in the title of the draft decision, reference to conservation, sustainable management of forests and enhancement of forest stocks.\textsuperscript{127} When this same title remained in the CoP decision agreed to in Copenhagen in December 2009, REDD-plus was officially born.\textsuperscript{128} AWG-LCA’s draft decision was similar in approach. Paragraph 3 “decides that developing countries should contribute to mitigation actions in the forest sector by undertaking the following activities… deforestation, degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks.”

C. Limiting International Oversight

The Negotiation Context

REDD itself has been developed under the auspices of the UNFCCC, but no formal treaty or binding agreement has been negotiated to implement it. The context for the most formal decisions in the discussion that follows, then, is itself a context of documents and decisions that have a lesser status in international law than treaty provisions. I have argued elsewhere that CoP decisions that are closely connected to the original text of a treaty are in some sense indistinguishable from the original obligations of the parties.\textsuperscript{129} These REDD-related CoP decisions do have some normative effect and cannot be said to be without influence. Nevertheless, they do not rise to the level of the hardest legal obligations in international law, agreements negotiated by the parties that are intended to have legal effect.

This context is interesting. Over the course of the negotiations on REDD, the possibilities for what institutional mechanism would be used to support the mechanism shifted significantly. When discussions about REDD were first put on the table, parties discussed the appropriate forum for its implementation, either through a new protocol negotiated under the auspices of the UNFCCC, or through the Kyoto Protocol.\textsuperscript{130} Yet to date REDD has been

\textsuperscript{126} Earth Negotiations Bulletin, SB30 and AWG Highlights: Wednesday 3 June, 2009, Vol. 12 No. 413, at 4 (June 4, 2009) (“In the Corridors”) (reporting the perception of one participant that the “forest club” – those discussing REDD and LULUCF – “speak their own language” and the words of one African delegate who said that “generally speaking, those negotiators are a different breed”).
\textsuperscript{127} Earth Negotiations Bulletin, SB30 and AWG Highlights: Tuesday 9 June, 2009, Vol. 12 No. 418, at 2 (June 10, 2009); See also Earth Negotiations Bulletin, Summary of the Bonn Climate Change Talks:1-12 June, Vol. 12 No. 421, at 15 (June 15, 2009) (“At the suggestion of a number of developing countries, the title of the appended draft decision now includes mention of conservation, sustainable management of forests and enhancement of forest carbon stocks.”).
\textsuperscript{128} Decision 4/CP.15, supra note 3.
\textsuperscript{129} See Wiersema, supra note 43.
\textsuperscript{130} See Deforestation, supra note 3, at 7 (arguing that one possibility for implementing their proposal would be to have a separate optional protocol, or to go through the Kyoto Protocol using article 12, although that would require a deviation from the Marrakesh rules); United Nations Framework Convention on Climate Change, Twenty-Fifth Session, Nairobi, 6-14 November 2006, Report on a Workshop on Reducing Emissions from Deforestation in Developing Countries, Note by the secretariat, FCCC/SBSTA/2006/10, at 12-13 (Oct. 11, 2006) (noting that a representative from Brazil had presented his country’s preliminary proposal for an arrangement in the context of the UNFCCC).
developed entirely through CoP decisions. As REDD was developed in the years between 2005 and 2012, discussion about formal inclusion in a successor to the Kyoto Protocol waned, likely at least in part because general negotiations about a successor to the Kyoto Protocol were themselves stalling. Thus, in some sense, the fact that REDD’s negotiation took place within the context of, at their most formal, CoP decisions and at their least formal, workshops and through submissions of the parties, was a victory for REDD. It meant that REDD would not fail to get underway even if the parties could not agree to a successor agreement to the Kyoto Protocol.

Yet the negotiations reflect something more than just this lack of faith in the parties’ ability to negotiate a binding agreement for climate change generally. The discussions and negotiations suggest that the appetite for an international role in REDD was limited and became more so as the years progressed. To some extent, the desire for less binding international oversight tracks the timeline in the change in scope of the REDD mechanism from one focused on deforestation. Although my research does not sustain any conclusions on cause and effect, the timing is at least relevant as part of the story of REDD.

The expansion in the scope of REDD discussed above tracks with comments by states parties, particularly developing country parties, to have REDD be driven by national priorities and national activity and not become part of a binding emission reduction scheme. As these strong principles came to be written into the CoP decisions, and as discussions over REDD went into the more policy-oriented forum of the AWG-LCA concurrently with the methodologically focused SBSTA, these policy preferences for national priority-setting and deference to the national became further entrenched and were embodied in language that limited the role of international institutions, especially international treaties and anything with apparent binding authority. This section of the article describes these developments from the beginning of REDD’s introduction in 2005 to December 2012.

The move to limit international oversight in REDD is a tricky one for developing countries because oversight by international bodies is, for most sources of funding, a prerequisite to releasing funds or incorporating REDD into a market-based scheme. Given the financial incentives for international oversight, then, it is striking how little support there is for it. Part of the question of international oversight relates to accountability. In Papua New Guinea and Costa Rica’s first proposal, they stated that developing countries were prepared to stand accountable for their contributions provided they would have access to international markets.131 As REDD has developed and increasing numbers of countries have favored fund-based approaches over market-based approaches, or a mix of both,132 this kind of direct statement has dissipated.

2006-2007: Situating REDD as a Voluntary Scheme with International Oversight

Early on, developing countries made clear that REDD should not be used to reduce the international legal obligations of developed countries – Annex I countries under the UNFCCC – and that any REDD scheme should be entirely voluntary on the part of developing countries.133 Thus, from the beginning, it was clear that REDD would not be part of an obligatory emissions reduction scheme. Costa Rica, one of the original proponents of REDD, was clear in its 2006 submission to the SBSTA that developed countries should not be able to participate in the

131 Deforestation, supra note 3, at 7.
132 See The Little REDD-Plus Book, supra note 4.
133 SBSTA, Submissions from Parties, 2006, supra note 82, at 60-61 (submission from Brazil).
scheme, and it was not alone in that view. By contrast, Switzerland stressed the need to tackle the issue of deforestation issue at the local, regional, and global levels.

Given the history of climate change negotiations at the international level, it is not surprising that developing countries would want a voluntary scheme unavailable to developed countries. It is also not surprising that some developed countries would seek greater commitments from developing countries.

Nevertheless, in the early days, this voluntary REDD scheme was still situated within an international legal framework. In these early years, developing countries’ submissions consistently referred to the need for REDD to be consistent with international law principles that included permanent sovereignty over natural resources, benefit sharing, capacity building and technology transfer, fairness and equity, and common but differentiated responsibilities. Some also referred to consistency with other international agreements and activities, particularly in the realm of international action to address deforestation.

Early submissions showed some countries tolerating international oversight, even among developing countries that emphasized the need for the mechanism to be voluntary and country-driven. Indeed, some of the impetus for supporting the scheme was precisely to bring efforts to combat deforestation within an international framework that would allow for funding for activities that countries might be doing anyway. As Indonesia noted in its 2006 submission to the SBSTA, national and policy actions by developing countries that would reduce emissions from deforestation were not being currently included within an international mechanism, while equivalent actions taken by developed countries were included in UNFCCC mandated reports detailing how these developed countries were meeting their emissions targets. Morocco stated that it wanted a framework that was strong, albeit flexible. Switzerland, coming from a developed country perspective, spent far more time on the desire for synergy with other international processes, and advocated a strategic role for the Climate Change Convention, with a role of providing knowledge on climate issues and coordinating developing country action.

One question that has periodically recurred in discussions is whether to address technical issues regarding REDD first, or whether to tackle policy questions, such as sources of financing, either first or concurrently with technical issues. Addressing technical questions first would be consistent with a strong role for international oversight, frequently coupled with a desire to move towards a market-based scheme rather than a fund-based scheme. By contrast, for those parties wishing to promote technology transfer, capacity transfer, and funds in a system with high deference to the nation state frequently prefer to resolve policy questions first or at least

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134 Id. at 62 (submission from Costa Rica).
135 SBSTA, Submissions from Parties, Addendum, 2006, supra note 82, at 9 (submission from Switzerland).
136 See SBSTA Submissions from Parties 2006, supra note 82, at 88 (submission from Indonesia); Id. at 103 (submission from Panama et al.) (arguing in favor of applying the principles of sustainable development and poverty eradication); Id. at 110 (submission from Peru et al.) (arguing that a mechanism should promote real benefits for climate, common but differentiated responsibilities, sustainable development, sovereignty, and fairness and equity).
137 Id. at 117 (submission from United States) (calling for any crediting mechanisms to occur under the auspices of the Kyoto Protocol).
138 See Boyd, Ways of Seeing, supra note 10.
139 SBSTA, Submissions from Parties, 2006, supra note 82, at 3 (submission from Indonesia).
140 Id. at 96 (submission from Morocco).
141 SBSTA, Submissions from Parties, Addendum, 2006, supra note 82, at 10 (submission from Switzerland). Switzerland also talked about consistency with national plans.
concurrently, worrying less about the technical questions to be resolved by an international body overseeing implementation.

It is somewhat significant, then, that in the first two years discussions and negotiations about REDD took place within the setting of the UNFCCC’s technically oriented committee, the SBSTA, with a heavy focus on methodological and technical concerns. In the initial negotiation period about REDD, the parties focused on methodological and technical issues such as how to deal with measuring emissions from forestry activities and how to set baselines against which changes in emissions could be measured. While policy questions crept in to these discussions, for example when countries argued about whether countries with a good record of forest protection could use historical baselines so that they would not be penalized for their recent good behavior, the policy discussions were still tightly connected to methodological and technical questions.

In its background paper for the SBSTA’s 2006 workshop, the US noted that standard protocols would be needed for methodological questions like use of “the remote sensing data, tools, and analytical methods that suit the variety of national conditions but yet meet acceptable levels of accuracy.” At this early stage of discussion, deference to national conditions did not yet mean deference to national methodologies. At this point, the SBSTA also began to highlight the Intergovernmental Panel on Climate Change’s (“IPCC”) guidelines for National Greenhouse Gas Inventories and the IPCC Good Practice Guidance for Land Use, Land-Use Change and Forestry as a good source of methods for estimation of emissions from areas with measurable deforestation and degradation. Indeed, the SBSTA’s background paper itself relied heavily on information from the Food and Agriculture Organization (“FAO”), demonstrating the significance of international sources of information at least for the SBSTA at this stage of the negotiations.

2007: Beginning the Slide away from International Oversight

In 2007, this willingness to accept international oversight and technical assistance began to wane, albeit slowly at first. In submissions in 2007, while some role for international consistency was still on the table, the balance of support began to tip in favor of flexibility and deference to national definitions and agenda-setting. This deference to national definitions and agenda-setting should not be confused with the degree of support for international assistance with capacity-building. Nearly all parties indicated that multilateral and bilateral cooperation would be needed to reduce emissions, and developing countries emphasized the need for capacity building and technology transfer flowing from developed countries to developing

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142 SBSTA, Background Paper for the Workshop, 2006, supra note 91, at 3.
143 Id. at 4. The background paper for the workshop also referred to a tool developed by the Intergovernmental Panel on Forests in 1996 that could determine causes of deforestation in a particular country. “This framework would allow each country to undertake its own analysis and develop its own national forest policy for sustainable development. To date, this formal framework has not yet been developed or applied.” SBSTA, Background Paper for the Workshop, Working Paper 1(a), 2006, supra note 93, at 11.
144 See generally SBSTA, Background Paper for the Workshop, 2006, supra note 91; SBSTA, Background Paper for the Workshop, Working Paper 1(a), 2006, supra note 93.
145 See, e.g., SBSTA, Submissions from Parties, 2007, supra note 94, at 13 (submission from Bolivia) (“To be effective, developing countries will themselves will determine which policy approaches are relevant and where to be applied.”).
countries in order to address deforestation. Thus, there was broad agreement that international cooperation was relevant for achieving the goals of REDD. This is not the same, however, as support for international oversight.

Bolivia’s submission in 2007 on behalf of several other developing countries highlighted the need for positive incentives along with a nationally-based REDD mechanism. Their submission advocated both market-based and non-market approaches and a desire for forest-based ecosystem services to be recognized and valued by the international community, while still strongly emphasizing principles focusing on state sovereignty and national circumstances: “[N]ot only should the Parties’ participation in efforts to reduce emissions from deforestation be voluntary, Parties alone shall decide how to implement specific measures.” Mexico advocated that international mechanisms should be “voluntary, ensure environmental integrity of the climate change regime, equitable, and efficient.”

Similarly, Thailand stressed the difficulty of having a standard definition of forests. Vanuatu, even as it focused on market instruments, urged that “[r]ather than attempt to identify a set of international policies,” the parties should “focus on positive incentives that can be linked to nationally developed policies.”

Yet not all parties were willing to give up on some role for international oversight, particularly those countries that would be providing resources and payments for REDD. In 2007, the fault-lines on this issue between developed and developing countries became more evident. Australia, for example, advocated a respect for the complexity of the problem and differences in national situation, while still arguing that the international community could develop a workable framework. Australia advocated principles that would require a lot of work by the international community to set priorities, but also advocated an outcome driven approach, rather than a rule bound approach. Germany’s submission in 2007, on behalf of the EU, showed even greater emphasis on a strong role for an international framework, with an emphasis on concrete policies and actions.

Although developing countries were more firmly in the camp of emphasizing the role of national governments over a role for international institutions, some countries were, at this stage, trying to feel their way to a middle ground. South Africa noted both the need to clarify

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147 See generally SBSTA, Submissions from Parties, 2007, supra note 94, at 11 (submission from Bolivia et al.).

148 Id. at 17. See also id. at 20 (suggesting an approach that would create a body of knowledge and experience “that would facilitate the development of a global program of incentives.”).

149 Id. at 69 (submission from Mexico). Mexico avoided concerns about the need for oversight with a market-based approach by urging that market-based options use the Clean Development Mechanism (“CDM”) with its existing international framework for oversight. Id.

150 Id. at 79 & 81 (submissions from South Africa and Thailand, respectively).

151 Id. at 88 (submission from Vanuatu).

152 Id. at 8 (submission from Australia).

153 Id. at 9-10. Australia’s submission is interesting in that it highlights a number of things Australia wants to be done in a centralized manner, while still wanting some deference to countries. See, e.g., id. at 10 (discussing definitions, which Australia says could be country-specific, but tied to the Marrakesh Accords and possibly other international agreements). See generally id. at 9-10.

154 See id. at 53-55 (submission from Germany).
definitional issues upfront and the difficulty of having a standard definition of forests. As we have seen, the SBSTA and Australia attempted to allocate roles for the national and roles for the international. New Zealand provided a particularly good example of this in its submission to the SBSTA in 2007. It stressed the need for both developed and developing countries to be involved, the need for multilateral action, and respect for sovereignty. As their submission put it, discussing the appropriate role for the SBSTA, “[t]he SBSTA should not be prescriptive. Instead, it should create an enabling environment for voluntary participation by Parties.” The submission urged that international process complement national policies. In a similar vein, Indonesia both urged a single definition of forest and the fact that that would then allow the scheme to fit different national circumstances. Consistent with this nested, tiered approach, at the actual SBSTA workshop in 2007, the EU perspective urged a preparatory scheme that could “explore approaches that combine national action and international support.”

At the workshop, on definitional issues, the participants discussed whether common or country-wide definitions would be needed. It was recognized that the use of common definitions would improve consistency and comparability among countries, while proposals were also made to use national definitions for forests and deforestation consistent with current and earlier practices for the preparation of national inventories, as reported to the UNFCCC bodies and/or the FAO. This would enable parties to include or exclude various elements in their approach for estimating reduced emissions from deforestation. Thus, the parties were already clear on the issues at stake in this debate, framed at this point as a concern about balancing consistency with flexibility.

The draft CoP decision that came out of the workshop in 2007 and the final decision from the CoP in Bali in December 2007 suggested that there was at least some agreement for consistency in reporting and for reliance on international standards for reporting of greenhouse gas emissions from deforestation. Despite bracketing a number of issues, paragraph 5 was not bracketed and encouraged “the use of the most recent reporting guidelines [from CoP decision 17/CP.8] as a basis for reporting greenhouse gas emissions from deforestation, noting also that Parties not included in Annex I to the Convention are encouraged to apply the Intergovernmental Panel on Climate Change good practice guidance.” With just the reference to the IPCC removed, this was adopted as part of the first CoP decision in Bali in December 2007.

In the run-up to the Bali CoP, as the parties debated expanding the scope of REDD, however, some concern about the level of international oversight had begun to show. In a group submission by several developing countries, the submitting parties expressed concern about not being able to address the drivers of deforestation because of “insufficient domestic resources and overly cumbersome requirements from international agencies” and complained that the standards for sustainable forest management were very high, which would mean developing countries would need additional support. Developing countries were, in essence, beginning to be more

155 Id. at 78-79 (submission from South Africa) (arguing that a standard definition of forests is complicated by continental and regional differences in species composition and local conditions, including historical factors).
156 Id. at 76.
157 SBSTA, Submissions from Parties, Addendum, 2007, supra note 98, at 5, 7 (submission by Indonesia).
159 Id. at 13.
161 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technological Advice, Views on Issues Related to Further Steps under the Convention Related to Reducing
explicit about the connection between international oversight and financial and technical support. However, unlike the early suggestion from Papua New Guinea and Costa Rica’s 2005 proposal, the relationship between funding and oversight was now flipped. Rather than international oversight and verification being a condition for the availability of resources, as it had tended to be framed before, particularly by developed countries, the actual achievement of emissions reductions and acceptance of international oversight was now being made conditional on the receipt of funding and technology transfer.

This split explains the disagreement about whether to pursue policy questions as well as methodological questions or just methodological questions. “Policy issues and positive incentives” is the phrase that connotes discussion of financial and technical support. Thus, when developed countries advocated focusing on methodological questions early on, it is because they considered that the resources should flow once the methodological questions were resolved. As Slovenia stated on behalf of the EC in its submission in 2008: “A submission on methodological issues is not, in the EU’s view, the place to discuss issues such as sources of support for positive incentives to reduce emissions but the EU notes that a sound methodological approach, such as that outlined here, would be a prerequisite for success in mobilizing sufficient funding for this.” Similarly, during the SBSTA’s Twenty-Eighth meeting in June 2008, a few developing countries argued that methodological issues could not be separated from discussions on financial mechanisms, while the EC supported discussing outstanding methodological issues item-by-item, and that the SBSTA’s work—which had been focused on methodological questions—should inform the work of the more policy-oriented AWG-LCA.

This approach was consistent with what was going on more broadly in the climate change negotiations. In general, in negotiations about future climate change mitigation efforts at the CoP, the parties were hotly debating whether developing countries would take on mitigation obligations that would be embodied in an international agreement or would commit only to “enhanced and incentivized mitigation [that is] measurable, reportable, and verifiable.” Developing countries sought to discuss financial issues before discussing mitigation options that might link technology transfer to achievement of mitigation objectives by both developed and developing countries, and the parties concluded an informal agreement on technology transfer before they agreed on mitigation obligations and objectives.

Yet, there is also a fine line between figuring out what might be a form of technical assistance, with standardized methodologies and definitions that could be useful to a country determining its reference baselines and a fear of standardization. As Australia put it, when arguing in favor of a market-based approach, good safeguards on questions of permanence,

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163 Id.
166 Id. at 2.
additionality, and leakage would be needed for a market, but developing countries would also need incentives to be able to meet these safeguards. Developing countries’ desire and need to achieve a balance between these two – the need for technical assistance as well as national control – is nicely demonstrated by a submission by a group of developing countries in 2008. It emphasized the desire that reductions of emissions under the REDD scheme be voluntary and that the parties “alone will determine how best to implement specific measure toward these objectives.” Yet they also argued in favor of standardization on methodological regulations applicable for developing country participation within all domestic, regional and international emissions markets. This particular submission favored market-based approaches and might have favored more emphasis on standardization for that reason. But even with that desire, it was also firmly in favor of country control over implementation, and wanted only the minimum international coordination needed to achieve a functioning market.

When the SBSTA convened in 2008 for their Twenty-Eighth Session, the countries still debated this problem, but finally resolved it with a compromise. The developed countries’ desire for language that would encourage facilitating cooperation and the developing countries’ desire for language that would encourage facilitating technical support both found a home, with language in the SBSTA’s draft conclusions that the SBSTA would identify capacity-building needs “in order to facilitate technical support and cooperation where appropriate.” This was a vague compromise, to be sure, but a compromise nonetheless.

2008-2009: National Control over Baselines and Reference Levels

In 2008, the struggle over levels of international oversight found a new home. As discussions continued on expanding REDD’s scope, questions about the baselines states should be using to determine reductions of emissions that would warrant compensation became more difficult. Early in the negotiations about REDD, when only deforestation was part of the scope of the mechanism, some parties had highlighted concerns about equity in how baselines, known then as reference emissions levels, should be set. These baselines, or reference emissions levels, are critical, because they are the point against which future efforts to limit deforestation and protect forests will be measured and, in turn, compensated. Countries with a relatively good track record on forest conservation expressed concern about fixing reference emissions levels at the present because they would get less money for continuing on a good course of limiting

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169 Id. at 6 (arguing that there was no need for more definitions of forest degradation beyond what the IPCC already had).

170 United Nations Framework Convention on Climate Change, Subsidiary Body for Scientific and Technological Advice, Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action, Draft Conclusions Proposed by the Chair, 2008, FCCC/SBSTA/2008/L.12, at 3-4 (Jun, 12, 2008).
deforestation. They would be punished, essentially, for having been a leader in limiting deforestation within their borders.

Although these points had surfaced in early submissions, until 2008 the parties had not spent very much energy on the question of whether baselines would be set according to emissions or according to some other, less quantitative, criteria. Now that the scope of REDD was beginning to expand, questions about the degree to which decisions about setting baselines should be country-driven or more centrally decided bubbled to the surface. Already, in 2008, during discussions about methodological issues – before the scope of REDD had been expanded fully – some parties suggested referring to “changes” instead of “reductions” in emissions. A day later, a group of developed countries stressed the role of historical emissions from deforestation in developing countries in establishing reference levels, while at the same time, many parties stressed the importance of flexibility in selecting the starting date or period for reference emissions. As Suriname explained in its submission in 2009 on technical and institutional capacity-building needs:

Simple historical base-lines are not adequate, because they characterize a different economic and social dynamic that led to low rates of deforestation: Suriname is now embarking on a more dynamic development trajectory and a deliberate strategy to increase the exploitation of its natural resources including expansion of agriculture. Therefore, Suriname’s reference scenario must be based on a modeled future economy and the projected emissions that would occur under a business as usual assumption that would normally accompany changes in land-use allocations, infrastructure investments, demographic and socio-economic trends, policy and enforcement, and any other causal or correlative factors that can be used to infer forest cover change with known levels of certainty.

In 2009, this issue really began to heat up. At first, it took the form of a split between those favoring centralized approaches and those favoring more national approaches. At a 2009 experts meeting, some experts suggested that global reference levels would be necessary, while others argued in favor of national (or regional) reference levels. Questions came up at this meeting that implicated the issue of centralized versus decentralized action, including whether countries would all set reference emission levels at once (assuming they would be set at the national level) and whether the level would depend on national circumstances. Indeed, some experts also raised the next step of whether reference emission levels proposed by participating

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173 Id.


developing countries would undergo expert review and subsequently be formalized in a CoP decision.\footnote{Id.}

A similar debate occurred with regard to data. While some experts argued in favor of global consistency, others expressed caution about a global database with guidelines becoming “the rule.” Rather, the role of guidance should be to “allow developing countries to improve and move forward in their efforts to reduce emissions from deforestation and forest degradation.”\footnote{Id.}

Yet the push for standardization was not going to go away, even with information coming from national sources, as the Secretariat produced a technical paper advocating some consistency in estimation and reporting of carbon emissions and removals, and the need for a centralized database and a centralized spatial data infrastructure.\footnote{\textsc{\small United Nations Framework Convention on Climate Change, Cost of Implementing Methodologies and Monitoring Systems Relating to Estimates of Emissions from Deforestation and Forest Degradation, the Assessment of Carbon Stocks and Greenhouse Gas Emissions from Changes in Forest Cover, and theEnhancement of Forest Carbon Stocks}, Technical Paper, FCCC/TP/2009/1, at 7-8, 36 (May 31, 2009).}

A third site for the debate about international oversight versus national control and flexibility involved questions related directly to REDD’s expanding scope. While many countries, including the US, proposed the IPCC as a starting point for definitions and expressed concern about the lack of consistent land use definitions,\footnote{Id. at 55 (submission from United States).} some of these also argued that there would be no need for additional definitions of forest degradation beyond the IPCC’s definitions. In other words, there was limited support for definitions to be negotiated as part of any binding provision or even as part of a CoP decision. At the mid-year SBSTA meeting in June 2009, these disagreements bubbled to the surface as the parties negotiated over the text of a draft CoP decision on methodological guidance to take to CoP 15 in Copenhagen in December 2009.\footnote{In general negotiations, not just those related to REDD, developing countries and developed countries were particularly divided at this historical moment.}

A number of parties wanted to replace the term “reference emission levels” with “reference removal levels,” a subtle but important shift in the way the parties might approach thinking about deforestation and conservation issues, and one consistent with the broad shift in REDD’s scope.\footnote{\textit{Id.} See also \textsc{Earth Negotiations Bulletin, SB 30 and AWG Highlights Saturday, 6 June 2009}, Vol. 12 No. 416, at 4 (June 7, 2009) (describing continuing discussions the next day on whether to refer to “reference levels,” “reference emission levels,” or “levels,” and on how much future guidance the SBSTA might want to recommend in the context of a possible outcome from CoP 15).} Even as the parties agreed to include references to conservation, sustainable management of forests and enhancement of carbon stocks in the title of the draft CoP decision, debates over whether to refer to “reference levels” and/or “reference emission levels” continued deep into the meeting’s negotiations.\footnote{\textsc{Earth Negotiations Bulletin, SB 30 and AWG Highlights: Monday, 8 June 2009}, Vol. 12 No. 417, at 4 (June 9, 2009).} Some parties indicated that reference emission levels were associated only with deforestation and forest degradation and wanted to include both phrases “in order not to prejudge the outcome in Copenhagen.”\footnote{\textsc{Earth Negotiations Bulletin, Summary of the Bonn Climate Change Talks: 1-12 June 2009}, Vol. 12 No. 421, at 15 (June 15, 2009).} Debates about language referring to the use of IPCC guidance, reference to independent review of national forest monitoring systems, and what countries should account for when establishing reference levels
also continued deep into the meeting. With regard to independent review of forest monitoring systems, some debate centered on whether results or the system itself should be open to independent review.

These debates were not resolved by the end of the meeting, with a draft CoP decision intended for Copenhagen’s CoP 15 that was heavily bracketed. Interestingly, going into the meeting, many parties had been happy with the draft and some “expressed frustration about the “explosion of brackets at the eleventh hour.” Whether this explosion was a result of the expanding scope of REDD is hard to say without further inquiry and might never be known with absolute certainty. Nevertheless, it was clear by the end of the SBSTA’s thirtieth meeting in June 2009 that several issues could not garner agreement.

Going into CoP 15 in Copenhagen in December 2009, the SBSTA’S heavily bracketed draft decision reflected all the fault lines already discussed. The draft requested developing country parties to take the most recently adopted IPCC guidance and guidelines into account as a basis for estimating anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes, but modified the request with the phrase “as appropriate” twice. The decision also requested the parties to establish “robust and transparent … monitoring systems,” with reference to the methodologies that should be included.

This too was modified by the phrase “according to national circumstances and capabilities.” Strikingly, a sub-paragraph in this section of the draft decision that requested developing country Parties to “[e]nsure that these monitoring systems and their results are open to independent review as agreed by the Conference of the Parties” was in square brackets, indicating that this matter was still subject to disagreement among the parties. The provision had been sought by some developed countries and one developing country had requested that text to be bracketed. Similarly, a subsequent paragraph recognizing that more work may be needed by the IPCC to provide supplemental guidance was also in square brackets.

The fault line about baselines and reference levels remained live in the draft decision going into CoP 15 also. The entire paragraph addressing baselines and what developing countries should take into account in setting them was bracketed. Further, particular elements within that paragraph were also bracketed, indicating that parties had not agreed on those

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187 See Draft decision, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technological Advice, Report of the SBSTA on its thirtieth session, held in Bonn from 1 to 10 June 2009, FCCC/SBSTA/2009/3, at 23 (Aug. 5, 2009) [hereinafter SBSTA Draft Decision [-/CP.15]]. The decision is intended solely to provide methodological guidance.
188 Id.
189 Id., supra note 187, at 24.
190 Id. at 24.
191 Id. at 24.
193 SBSTA Draft decision [-/CP.15], supra note 187, at 24.
194 Id. at 24.
195 Id. at 24.
elements. For example, at the request of two different developing countries, phrasing allowing for reference levels to be adjusted for expected future emission trends and phrasing that would allow domestic legislation, policies and measures that are still under development to be taken into account in setting reference levels were both added close to the end of the meeting and then bracketed because there was insufficient time to discuss them. The draft decision contains a reference to both reference emission levels and reference levels. With regard to those reference levels, however, the draft decision left the modifier “national” bracketed, indicating that parties still couldn’t agree on whether baselines should be sub-national, national, regional, or set at some global level.

When the final decision emerged from CoP 15 at Copenhagen in 2009, after negotiation in multiple sessions, it took into account a lot of the concerns of developing countries. On the debate over reference emissions levels and reference levels, the parties agreed to include both phrases, not surprising given the expanded scope of REDD at this stage of REDD’s development. On the question of centralization versus flexibility for developing countries, the balance of this decision tips heavily in favor of the latter, more flexibility for developing countries and more deference to their national circumstances and capabilities. For estimating anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes, the question of reference to IPCC guidance was resolved by adding the phrase “as appropriate” and referred to the need only to take the guidance “into account.” Similarly, the request for developing countries to establish “robust and transparent national forest monitoring systems is modified by the phrase “according to national circumstances and capabilities.” All of the subsequent subsections discussing how those monitoring systems should operate and what they should provide have some kind of modifier that retains a lot of flexibility for the developing countries, although the modifier for one of these leaves open the possibility of more or less oversight by the conference of the parties, depending on what the parties agree on in subsequent decisions.

Yet it would be a mistake to read the Copenhagen decision as a complete abandonment of a role for international oversight or support. Several provisions contain the phrase “in accordance with relevant decisions of the Conference of the Parties,” serving a dual function of deferring decision about the level of oversight that the CoP should exercise and leaving open the possibility that the CoP might exercise some oversight or add additional guidance. The decision also urges a role for the Secretariat to enhance coordination of capacity-building

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196 Id. at 24. Although this bracketing seems to have occurred because these possibilities were raised close to the end of the meeting and there was insufficient time to discuss them. See EARTH NEGOTIATIONS BULLETIN, Summary of the Bonn Climate Change Talks: 1-12 June 2009, Vol. 12 No. 421, at 16 (June 15, 2009).
197 SBSTA Draft decision [-/CP.15], supra note 187, at 24.
198 SBSTA Draft decision [-/CP.15], supra note 187, at 24.
199 Decision 4/CP.15, supra note 3, at 11. The text here is a little confusing, since the chapeau for paragraph 1 says that developing country parties are requested to take the following guidance “into account,” while subparagraph 1(c) referring to IPCC guidance for estimating emissions says “use.” Nevertheless, the modifier “as appropriate” suggests that the language is intended to give the developing country parties to whom it is addressed a lot of flexibility.
200 Id. at 12.
201 See id. at 12. See also id. (using “as appropriate” as a modifier); Id. (using “taking into account national capabilities and capacities” as a modifier); Id. (requiring information to be transparent and suitable for review “as agreed by the Conference of the Parties”).
202 See, e.g., id. at 12 (paras. 1(d)(iii), 2 & 7).
activities, invites parties to share lessons learned and experiences gained through a web platform on the UNFCCC website, and recognizes that further work may be needed by the IPCC. 203

CoP 15 was also important for REDD for the emergence of a new forum for discussion of policy issues, the AWG-LCA. Indeed, during discussions in the SBSTA, many parties highlighted that many of the most contentious issues, including monitoring, reporting and verification, and national and sub-national reference levels, were political in nature and should be addressed through the AWG-LCA. 204 Although no final CoP decision on REDD came out of the AWG-LCA’s activity in 2009, the draft CoP decision that emerged after the conference showed that the same fault lines were about to appear in this different setting. 205 The draft decision was presented to the CoP for adoption, but did not change much during the CoP and it was not adopted until a year later. 206 Yet its text is interesting as an indication of the starting point for negotiation of issues of REDD that now fell within the mandate of the AWG-LCA.

The draft decision highlighted substantial deference to national priorities and the need for national circumstances to be taken into account, highlighting the need for action to be voluntary, country-driven, in accordance with national circumstances and capabilities, respecting sovereignty, and consistent with national sustainable development needs and goals. 207 Yet, again, it also demonstrated some role for international oversight with the emergence of a set of draft “safeguards” to guard against the most problematic potential consequences of implementing REDD for both climate change mitigation and other important interests like indigenous peoples and biodiversity. 208 At this stage in the decision’s progress, in 2009, these safeguards were contained in the main body of the draft decision text, in paragraph 2. How those safeguards would be developed and implemented would then become a critical factor in determining where the line between international and national was going to be drawn, and is discussed in a separate section below. 209

203 See id. at 12 (paras. 2, 6, & 8).
205 See UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, Draft Conclusions Proposed by the Chair, Draft Decision -CP.15 Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forest and enhancement of forest carbon stocks in developing countries, FCCC/AWGLCA/2009/L.7/Add.6 (Dec. 15, 2009) [hereinafter AWG-LCA Draft Decision -/CP.15]].
207 See AWG-LCA Draft Decision -/CP.15], supra note 205.
209 The broader context of Copenhagen sheds some further light on this ongoing struggle to navigate the boundary between national needs and international oversight. Going into CoP 15 in Copenhagen, the question of developing a successor agreement to the Kyoto Protocol was high on everyone’s mind. Yet discussions during the CoP demonstrated that the parties did not even agree on what form that successor should take. See EARTH NEGOTIATIONS BULLETIN, Copenhagen Highlights: Thursday 10 December 2009, Vol. 12 No. 452, at 4 (Dec. 11, 2009) (discussing disagreements about whether an agreement should be a strengthened Kyoto Protocol, a new comprehensive legal framework engaging the US and developing countries in mitigation efforts (unlike the Kyoto Protocol), and even whether an agreement should be legally binding, on which developing countries were split). See also EARTH NEGOTIATIONS BULLETIN, Copenhagen Highlights: Wednesday, 9 December 2009, Vol. 12 No. 451, at 1 & 4 (Dec. 10, 2009) (discussing disagreements about whether a new legally binding agreement should be
A year later, in 2010, the AWG-LCA proposed a draft decision to the CoP in Cancun, which was adopted. With the expanded scope for REDD now embodied in a 2009 CoP decision, parties spent more time talking about the co-benefits – benefits beyond emission reduction and climate change mitigation – and, concurrently, about the safeguards to ensure both proper emissions reduction and limitations on bad collateral consequences. The decision itself is consistent with the negotiations up to this point, with reference to the broader scope of REDD, while modifying requests for national strategies or action plans and other actions with deference to national party capabilities and circumstances. It allows parties to develop either forest reference emission levels or forest reference levels or both, or interim measures, with provision also for sub-national forest reference emission levels and/or forest reference levels as an interim measure. It also recognizes a phased approach. In a separate paragraph, the decision makes clear that any request under the decision is subject to national needs and subject to whether there is international support for what they are trying to achieve:

[Recognizing] that the implementation of the activities referred to … above, including the choice of a starting phase …, depends on the specific national circumstances, capacities and capabilities of each developing country Party and the level of support received.

2010-2012: Limiting International Oversight over Safeguards Implementation

The safeguards are, in many ways, the most interesting element of the decision coming out of CoP 16, particularly with regard to the role of international oversight. Debates about the safeguards and their implementation echo many of the debates already discussed. For parties, the critical questions revolved around how implementation of these safeguards would be managed and what role international institutions would play in supervising or reviewing compliance.

A few changes had occurred to the AWG-LCA’s draft decision in the time period between Copenhagen and Cancun. The safeguards, which had been part of the draft CoP decision, were moved to an Appendix. The Appendix itself begins with a set of principles to guide REDD activities. Under these principles, activities undertaken under the REDD

adopted). Yet Copenhagen ended with the Copenhagen Accord, agreed on outside the regular processes of the CoP, with a contentious legal status and a weak commitment to reduce emissions. Certainly, no new protocol came out of Copenhagen. See also id. at 1 (discussing that some of the parties were opposed to a new legally binding agreement); Id. at 4.


211 Id. at 13, paras. 70-74.
212 Id. at 13, para. 71.
213 Id. at 13, para. 73.
214 Id. at 13, para. 74.
215 Id. at 26, Appendix I.
216 Id. at 26, Appendix I, art. 1(e)&(f).
217 Id. at 26, Appendix I.
218 Id. at 26, Appendix I, art. 1.
mechanism must contribute to the achievement of the UNFCCC Article 2’s objectives, which focus on mitigation and with Article 4(3), which refers to the need for developed countries to commit to providing new and additional financial resources to developing countries. They must be country-driven and – in a change from the word “voluntary” – “be considered options available to Parties.” Activities under REDD must be “consistent with the objective of environmental integrity” and “take into account the multiple functions of forests and other ecosystems.” This latter phrase was added at Cancun. A number of subparagraphs stress that REDD activities should be consistent with national priorities, sustainable development, and the adaptation needs of the implementing country. They must also be supported by adequate and predictable financial and technology support, including support for capacity-building, be results-based, and promote sustainable management of forests.

Article 2 of the Appendix contains the safeguards. The safeguards are to be “promoted and supported,” a different level of exhortation from the principles contained in article 1 of the CoP Decision Appendix, which states that activities “should” contribute and be consistent with the principles set out in the subparagraphs. The safeguards refer to consistency with both national forest programs and relevant international conventions and agreements. They do not, however, specify which international conventions and agreements should be deemed relevant.

The safeguards also provide for “[r]espect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws.” In a shift, and likely compromise, this provision also “not[es] that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples.” While earlier drafts had either referred explicitly to the UN Declaration as a source of rights for indigenous peoples or had dropped the reference to a footnote, this apparent compromise simply notes the General Assembly’s approval of the Declaration, without establishing it as a source of any rights.

For biodiversity and forests, the safeguards’ most significant provision is contained in paragraph 2(e), which states that the safeguard should be promoted and supported “[t]hat actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in … this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.” The use of the word “ensuring” in this provision suggests that it is to have some substantive force.

Developing country parties are requested, in their efforts to undertake REDD activities, to develop, inter alia, “[a] system for providing information on how the safeguards … are being provided.”

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219 Id. at 26, Appendix I, art. 1(a)(b).
220 Id. at 26, Appendix I, art. 1(c).
221 Id. at 26, Appendix I, art. 1(d).
222 Id. at 26, Appendix I, art. 1(d).
223 Id. at 26, Appendix I, arts. 1(e)-(h).
224 Id. at 26, Appendix I, arts. 1(i)-(k).
225 Id. at 26, Appendix I, art. 1.
226 Id. at 26, Appendix I, art. 2(a); See also Savaresi, supra note 18.
227 Id. at 26, Appendix I, art. 2(c).
228 Id. at 26, Appendix I, art. 2(e). The last two safeguards refer to aspects of permanence and leakage, favoring “[a]ctions to address the risks of reversals” and “[a]ctions to reduce displacement of emissions.” Id. at 26, Appendix I, art. 2(f) & (g).
This is itself very deferential to state sovereignty and is reliant on procedures and reporting, without any provision for oversight.

The SBSTA was charged with developing “guidance” relating to this request for presentation to the parties at CoP 17. Interestingly, the SBSTA was to develop “modalities” rather than “guidance” on the other aspects of the parties’ requested implementation, such as the development of a national strategy or action plan and a national forest reference emission level and/or forest emission level. This suggests that the safeguards were to receive less direct international oversight than the other aspects of national implementation of REDD. And this is of course all the more striking because these provisions and the CoP decision were already highly deferential to sovereignty and national interests.

Comments from the parties in 2011 about the guidance that the SBSTA was charged to develop vary in telling ways. There are points of general agreement. Parties generally describe the importance of national scale implementation of the safeguards information systems and pay deference to national circumstances. Similarly, most parties recognize a role for general guidelines or principles that should guide everyone.

Parties were still split on whether the system for providing information on how the safeguards are being addressed and respected should be fully integrated into other regular reporting obligations under the UNFCCC or should be more ad hoc, leaving it to the discretion of the parties on when and what to report. They were also split about the role of international oversight of the content of these reports.

The split was in large part a split between developing countries and developed countries, but not entirely. Costa Rica, for example, a country that is supportive of a market-based approach to REDD seemed more willing to tolerate international oversight. Costa Rica’s submission urged that the system for providing information on safeguards is “an integrated part of REDD + strategies” and that this information system “should be part of the overall information on the both [sic.] REDD+ strategy in general.” Costa Rica urges that this system also be consistent with the system for monitoring, reporting and verification of REDD+. Safeguards information should be presented “as an integral part of progress reports on the implementation of the overall REDD+ strategy” and “the periodicity of the provision of information on safeguards should be consistent with the reporting intervals of the REDD+ strategy in general.”

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229 Id. at 13, para. 71(d).
230 Id. at 28, Appendix II, para. (b).
231 Id. at 28, Appendix II, para. (b). See also id. at 12, para. 71(a)&(b).
233 See, e.g., id. at 18 (submission from Brazil).
234 See id. at 24 (submission from Costa Rica).
235 Id. at 25.
236 Id. at 26; See also id. at 60 (submission from Poland and the European Commission on Behalf of the European Union and its Member States) (demonstrating that the EU believes that a CoP decision should direct parties to submit safeguards information as part of its National Communications and biannual update reports).
Norway was the most explicit about the way in which it viewed the safeguards.\textsuperscript{237} For Norway, the purpose of the safeguards information system is “to inform and strengthen the policy work and implementation of REDD+ policies” and “to satisfy the needs of financial contributors on the use of finance and implications of policies and activities.”\textsuperscript{238} In its submission, Norway stressed the principles of “transparency, involvement of stakeholders, reliability of information, and complete coverage” of the seven safeguards.\textsuperscript{239} Norway also argued that the term “addressed” in the Cancun Agreements implies action that “is intended, is taking place or has taken place” and that the term “respected” implies “the achievement of a certain result.”\textsuperscript{240} Norway also urged that a CoP decision on this issue would be necessary.\textsuperscript{241} Norway “is of the opinion that the Cancun decision mandates the provision of information at regular intervals.”\textsuperscript{242}

These positions, which can be said to advocate a more centralized approach to reporting about the safeguards, can be contrasted with the positions of several developing country parties. A submission by the Coalition of Rainforest Nations and a number of like-minded developing countries urged that guidance on the system for providing information on how safeguards are being implemented should be flexible, nationally led and developed, respect national sovereignty, legislation, diversity, and socio-economic conditions, and consistent with national development priorities.\textsuperscript{243} In addition to these, they added, “transparency, regularity, consistency, reliability and broad participation should be guiding principles of the system.”\textsuperscript{244} They went on to stress that guidance developed by the SBSTA not be “a prejudice to official national information systems.”\textsuperscript{245} With regard to the timing of reporting, while these parties acknowledged the need for regular reporting, these developing country parties also argued that this information should only be provided for supported actions under REDD+ and that they should be reported “through existing systems such as national communications consistent with country capability and the level of technical and financial support received as part of the whole REDD+ strategy.”\textsuperscript{246}

Brazil stressed that the system for providing information on safeguards should be country-driven, even as they accepted the need for clear general principles and workable guidance. Thus, they argued that “[r]ather than having a single system to be implemented by all Parties, each country will develop its own information system, oriented by general guidance to be provided by SBSTA and the CoP.”\textsuperscript{247} They went on to say that the type of data and information to be included in the systems of information should be a national decision and that the data and information “should flow as deemed appropriate by each developing country.”\textsuperscript{248}

\textsuperscript{237} See id. at 86 (submission from Norway).
\textsuperscript{238} Id. at 87.
\textsuperscript{239} Id.
\textsuperscript{240} Id. at 86.
\textsuperscript{241} Id. at 89 (emphasis added).
\textsuperscript{242} Id. at 89 (emphasis added).
\textsuperscript{243} Id. at 15 (submission from Belize et al.).
\textsuperscript{244} Id.
\textsuperscript{245} Id.
\textsuperscript{246} Id. (emphasis added).
\textsuperscript{247} Id. at 18 (submission from Brazil).
\textsuperscript{248} Id. at 18; See also id. at 19 (stating that the timing for presentation of data and information should be defined domestically and respect national circumstances and challenges).
“Equally important,” the submission says, “is to maintain the system for information on safeguards separate from the monitoring, reporting, and verification system.”

At CoP 18 in Doha in December 2012, these disputes about the level of oversight of implementation of the safeguards continued. While some parties proposed a new REDD+ Committee to mainstream the implementation of REDD activities, a number of other countries opposed this. Similarly, some parties discussed the possibility of establishing a governing body under the authority of the CoP to promote and coordinate REDD activities, while others expressed their opposition to creating new institutions. Parties also could not agree on whether to link finance to take account of the achievement of non-carbon benefits. The result of these disagreements was the creation of a new process under the auspices of the SBSTA and the Subsidiary Body on Implementation (“SBI”). Thus, as of December 2012, the implementation of the safeguards remains without clear international oversight and standardization.

D. Conclusion

Analysis of the submissions of the parties and the decisions of the conferences of the parties between 2005 and 2012 gives us two narrative strands in the story of REDD. First, the scope of REDD expanded significantly, beginning with a focus only on deforestation and ending with a scope that included conservation and sustainable forest management. Second, over those same years, the parties limited the role of international institutional oversight, limiting the role of international law in REDD.

The following Part IV of the article discusses the consequences of REDD’s shifts for REDD’s likely effectiveness and discusses two problems that arise from failing to see the true story of REDD.

IV. IMPLICATIONS OF THE TRUE STORY OF REDD

A. The Consequences of REDD’s Shifts

The result of the story in Part III is that REDD has become a more complicated mechanism and a more nationally oriented one. REDD’s expanded scope has led to more difficult methodological problems of accounting for emissions reductions. At the same time, the narrowing of a role for international legal oversight means this complex system will now be managed with less supervision and oversight from international institutions.

The consequences of these developments are significant. In order to be effective, a REDD mechanism must be able to measure emissions reductions from covered activities. It must also ensure that emissions reductions are actually achieved, determine which of those

249 Id. at 18.
251 Id.
252 Id.
253 Id.
254 Id.
reductions are additional to reductions that would have occurred anyway, ensure that emissions reductions do not lead to increased emissions somewhere else in the same country or outside its borders, and ensure that REDD activities do not violate indigenous and local peoples’ rights and destroy biodiversity. The technical expertise and international oversight necessary to ensure all all of this has been made significantly more difficult by the way REDD has been negotiated.

As REDD’s scope began to expand, negotiating countries recognized this would have an impact on the complexity of implementing REDD. By the end of 2009, REDD was clearly REDD+. Just as the scope of REDD had expanded, so had the needs of developing countries to implement REDD. The SBSTA began to seek comments on technical and institutional capacity-building needs. In response, even countries with extensive monitoring experience, like Brazil, Indonesia, and Costa Rica, noted the need for increased capacity-building as a result of the increasing complexity of the task. Indeed, the addition of degradation alone to the equation was enough to add complexity for some countries.

Certainly, the difficulty of monitoring and developing baselines was increased with a move from a more pure focus on deforestation. “While ongoing research and technology development has contributed to reducing the uncertainty of monitoring and estimation of forest degradation to some extent, uncertainty is still relatively high compared to the one with estimation of deforestation.”

Interestingly, the need for increased capacity-building was in part to achieve the kind of methodological certainty that would generate flows of resources. Thus, an interesting shift had already taken place by 2009. As the scope of REDD expanded, so the potential for resources to help with important conservation goals had also expanded. However, at the same time, developing countries would now need more resources to provide the kind of accounting certainty that would allow developed countries to release funding for conservation. The parties had put REDD into a circular position. Perhaps in response to this, at an experts meeting on methodological issues held in 2009, experts suggested that there should be period during which “financial support is provided for policy implementation before any actual payments for emission reductions are given or received.” Indeed, the experts meeting also raised significant

255 SBSTA, Submissions from Parties, 2009, supra note 174, at 35 (submission from Indonesia); Id. at 12 (submission from Costa Rica).
257 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, Subsidiary Body for Scientific and Technological Advice, Information on Experiences and Views on Needs for Technical and Institutional Capacity-building and Cooperation, Submissions from Parties, Addendum 2, FCCC/SBSTA/2009/Misc.2/Add.2, at 4 (May 26, 2009) (submission from Japan). See also id. at 6 (noting that technologies for estimating emissions from these additional activities in developing countries “is more complicated.”): See also id. at 10 (submission from Switzerland) (sharing its experiences in Madagascar, Switzerland commented that the need for capacity-building was particularly true “where remote sensing is still too limited in estimating carbon stock changes where only degradation, but no clearly detectable deforestation has yet taken place… Moreover, in cases where an over-arching [sustainable forest management] approach is to be furthered, e.g., in the case of restoration of once degraded forests, such considerations become even more relevant to the success of all REDD activities in the very long run.”).
questions about the desire to provide incentives for sustainable forest management and conservation, where those activities may not lead directly to emissions reductions.\textsuperscript{259}

The expansion of the scope of REDD coincided with more discussion of protection of indigenous peoples and of biodiversity protection. In 2009, for example, Switzerland wanted to draw an explicit link between indigenous peoples’ rights and sustainable forest management.\textsuperscript{260} In this sense, the expansion of REDD’s scope was an improvement over the narrow and acontextual constructs of an approach that focused solely on deforestation and of trees as carbon emission units.\textsuperscript{261}

This shift was a double-edged sword. Concerns about biodiversity and about the rights of indigenous peoples would be implicated by a REDD mechanism that focused only on deforestation, relatively narrowly defined. Yet they would be far more implicated by an expansion of that scope into managed forests and forests subject to conservation activities. With this heightened impact, representatives of the negotiating parties may have begun to pay more attention to the concerns of indigenous groups and to worries about biodiversity. With an expanded scope came increased attention. This increased attention came with increased risk. As the Secretariat noted in comments at CoP 15 in Copenhagen in 2009, “REDD methodologies based only on net deforestation rate could fail to reflect actual change in carbon stocks and to deliver biodiversity co-benefits.”\textsuperscript{262} Once the scope was expanded, methodologies had to change. At the same time, those methodologies had become increasingly difficult to develop.

By 2009, the role of international oversight was also changing in the new REDD mechanism. By 2012, even the safeguards that were intended to ensure that REDD would achieve the goal of emissions reduction without undermining biodiversity protection and protection for the rights of indigenous groups, were subject to minimal international oversight. The international community had negotiated an instrument which was country-driven and voluntary with limited international oversight and even limited international guidance. Not only is participation in REDD voluntary, but the manner of implementation is being made increasingly flexible and ad hoc.

In short, at the international level, the parties have negotiated a soft law mechanism with severe implementation difficulties. In that sense, it has far more in common with the international legal regime that currently governs forests and biodiversity than it does with the hard law world of the international legal regime that governs climate change.

The mechanism that formed between 2005 and 2012 is very different from the one proposed in Papua New Guinea and Costa Rica’s initial proposal, and very different from the one that most commentators assume it to be. In 2009, a group of experts proposing the design elements for a REDD mechanism proposed a mechanism with a limited scope and with international standards and oversight.\textsuperscript{263} Their words are worth quoting because what they advocate is so different from what has actually transpired.

\textsuperscript{259} \textit{Id.}


\textsuperscript{261} See Boyd, \textit{Ways of Seeing}, supra note 10.


\textsuperscript{263} Stockwell, \textit{supra} note 4.
Stockwell, Hare, and Macey advocated a mechanism that focused solely on deforestation, without including degradation, albeit with a somewhat broad definition of deforestation that would, in their words, “address most of the impacts of degradation.”

As these writers say, expanding the scope of REDD would change the mechanism: “Specific and targeted action will be required to reduce deforestation rates and associated GHG emissions. This action will be significantly different from measures designed to support conservation, afforestation, reforestation or other land use changes.”

Further, “[t]he goals of the mechanism should be articulated in advance, since a mechanism the sole purpose of which is to reduce emissions could be structured quite differently from a mechanism the purpose of which is also to protect biodiversity and the rights of indigenous peoples.”

Further, these same commentators argued that “[i]nternational standards would need to be developed to ensure the protection of biodiversity and the rights of indigenous communities in the implementation of REDD activities,” drawing on principles already agreed in other fora, such as the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples.

These commentators argue that “[w]ithout international standards a REDD mechanism is likely to repeat a CDM-like experience in which only the emission reduction objective is met. There can be no justification moreover for mandating international standards for measuring [greenhouse gas] reductions but not for the mechanism’s other goals.”

As it stands today, the mechanism that was negotiated and supported over the years does not follow these suggestions.

We could speculate as to why the scope of REDD changed over time. One possible explanation is that the international community wanted to enhance the co-benefits of biodiversity and forest protection through more contextual and ecosystem-based approaches to forest protection. Another possible explanation is the desire on the part of developing countries to expand the range of activities for which they could be compensated, and possibly recognition by developed countries that expanding that range could in turn help developed countries with their emissions reductions targets. However, these possible explanations, although hinted at in parties’ submissions, are speculative and this article does not provide the evidence for any causal analysis. Suffice it to say that the international community was unwilling to put the issue of forest protection into a mechanism that focused only on deforestation.

The move to more limited international oversight is relatively easy to understand. It has come with an overall shift in the focus of international environmental law towards national implementation and is also consistent with trends in the negotiations about climate change mitigation more broadly.

What is clear is that the two narrative strands tell us a story about REDD that is at odds with the image of REDD as the great savior of forests in international law. While the expanded scope of REDD seems, at first blush, welcome in that it is consistent with ecosystem principles and recognition of the broader role of forests in biodiversity, it also means that REDD is now far harder to implement and monitor. Indeed, despite the recognition of different forest protection activities in REDD, it is not clear that forests are actually given a greater role than as emission...
reduction units. The expansion of the scope of REDD reflects the complexity of dealing with biodiversity and forests on a global scale.  

Further, the increasing limits on international oversight suggest that contrary to the idea that the climate change regime would provide some hard international law structure to the international regime governing forests, the reverse has happened. As forests have entered into the climate change regime, they have brought with them their tradition of soft instruments, voluntary action, and a minimal role for international oversight.

B. Misdirected Focus and Misdirected Accountability

Two problems result from a failure to understand the true story of REDD. I term the first misdirected focus and the second misdirected accountability. Both have the potential effect of letting REDD be implemented while we look elsewhere, in turn potentially allowing REDD to serve as a cover for limited emissions reduction, weak forest protection, infringement of indigenous and local peoples’ rights, and harm to biodiversity.

The first problem that results from misunderstanding the true story of REDD leads to misdirected focus. If we assume that the REDD mechanism being created within the UNFCCC will include strong international oversight and hard law principles, we will likely spend energy advocating specific reforms at the international level while possibilities for improvement at the domestic level may go unnoticed. This is not to suggest that we should take our eye off the ball of the international level completely. However, we cannot ignore the import of the national level and even sub-national level of activity.

Commentators already recognize that the REDD mechanism, as with many international environmental law mechanisms, will involve a complex interaction among governance levels and a less hierarchical system than we have been used to seeing in international law. As Boyd describes REDD, for example, it is part of a post-Copenhagen legal assemblage, a form of polycentric governance.

The story in this article both confirms Boyd’s view and expands on it. It highlights not only that REDD is part of a complicated set of relationships among various governance levels, but that it is also a country-driven mechanism with an ever-increasing likelihood that it will even lack any significant international standard-setting or guidance beyond the articulation of broad principles such as sovereignty over natural resources and equity.

The fact that this occurred within a mechanism that was expanding its scope into areas that have been historically kept within the sphere of national, or even local, governance is significant. It suggests that certain environmental problems are sufficiently complicated that the international role will be harder to articulate and will have to show substantial deference to national spheres of governance.

This is not entirely inconsistent with what is needed for biodiversity protection more generally, since so much of what has to happen for conservation has to be tailored to local context. Nevertheless, it tells us something important about where we should focus our attention.

269 See Long, Global Climate Governance, supra note 18 (arguing that the same things that have undermined the forest regime could still undermine REDD).

270 See Boyd, Fragmentation, supra note 33.

271 See Epple, supra note 30, at 10 (“Significant challenges to the development of biodiversity safeguards result from the high spatial variability and the complex ecological requirements and relationships that need to be taken into
First, if we focus our attention on the details of REDD design at the international level, we will be misdirecting that focus because so much of the actual activity of implementing REDD and REDD’s safeguards will occur at the national and local levels of governance. Thus, believing that REDD is firmly situated within a hard law international instrument will result in misdirected focus.

This does not mean, however, that we should focus all our attention on the national and local levels of governance. A failure to focus sufficiently careful attention on the institutional design of a mechanism like REDD could result in us losing sight of what role international law could and should play.

Ecologists have long told us that our focus should be on multiple scales of governance. We cannot ignore the international level because of the benefits it can provide for information sharing and also for standard-setting. Seeing the true story of REDD reminds us that our work at that level may not be done. If we believe that the international level has something to offer, we should pay attention to the form of that role and not just to specifics of design that deal with the substance of REDD like whether it will be a market-based or fund-based system.

The second problem that results from reliance on a false view of REDD as an international legal mechanism is misdirected accountability. Misdirected accountability arises even if the false view of REDD includes a recognition of the role of national level implementation.

If we believe REDD is fundamentally an international law mechanism with hard law obligations, we will seek to hold international institutions and actors accountable for failures. Yet the reality is more likely that those responsible for failures are those responsible for implementation and monitoring. These are national and sub-national actors, private actors, third country governments, and, in some instances, international institutions and actors.

What would it mean to hold other parties accountable? It could change the way in which resources are directed. It could also change the kind of reporting and monitoring we would require before projects can go forward. All of those involve us paying attention to the details of the institutional framework within which REDD sits, meaning the complex of international standards, national legislation, private actor standards, and local practices, to name just a few.

V. CONCLUSION

While we’ve been worrying about the design of a REDD mechanism at the international level, REDD is heading for failure. REDD projects might be underway, but the lack of international standardization and support, coupled with the methodological difficulties inherent in REDD’s expanded scope, means that we have no way of ensuring these projects meet the goal of climate change mitigation and comply with the safeguards. Even with the best intentions in the world, implementing countries will struggle with the complexity of the problem. With limited international oversight, and even limited provisions about reporting to international institutions, it will be harder for us to know what is happening on the ground.

The standard narrative of REDD suggests that it offers the promise of an international hard law instrument that will address both climate change mitigation and biodiversity and forest account in its conservation. These result in a need to define biodiversity goals at various scales and make it difficult to provide universally applicable safeguards that are both stringent and appropriate to the context in which they are implemented.”).
protection. This article reveals that the true story of REDD’s negotiation between 2005 and 2012 has left us with something remarkably different. REDD has been negotiated to be a mechanism with an unwieldy scope and a country-driven, ad hoc approach to standards and implementation.

Believing the false narrative leads to two significant problems: misdirected focus and misdirected accountability. Both problems result from a belief that the success or failure of REDD turns on what happens at the international level. The reality is that it will primarily turn on the interaction among multiple actors: national actors, private actors, sub-national actors, and some international actors. Only if we recognize this can we start to pay attention to what will be needed to ensure that REDD can achieve its goals of climate change mitigation and biodiversity and forest protection.

If we don’t pay attention to the real story of REDD, while we are not looking, REDD is likely to become nothing more than a cover for limited emissions reduction, weak forest protection, infringement of indigenous and local peoples’ rights, and harm to biodiversity. At best, it will be irrelevant. At worst, it will be a disaster.