Regulating the Market in an Era of Globalisation:
Global Governance via the Forest Stewardship Council[1]

By

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Introduction

While the recent process of globalisation has been underway for at least 50 years, its extensity, intensity, velocity and impact propensity have never before been so great (Held et al 1999). In the past two decades, too, globalisation has been facilitated by neoliberal ideas promoting a reduced role for the state and an increased role for the market dramatically increasing the number, reach and power of multinational corporations (Harvey 2005). Although it is evident that the global market system has grown beyond the control of individual states and inter-state organisations, many analysts continue to seek national, inter-national and regional regulatory arrangements (Cerny 2006). Yet expecting such institutions to regulate the global market in the interest of good economic, social and environmental outcomes misunderstands the new role of the state in a globalising world, which is to capture as much of the economic surplus generated by globalising capitalism as possible within its borders. Despite its regulatory weakness, the state will continue to play a crucial role in creating the base conditions for society and the good life in any neo-medieval, poly-centric future (Ruggie 1993; Cerny 2006). Increasingly, however, the regulation of global capitalism for the economic, social and environmental benefit of all rests with global civil society, which must empower itself directly via its own institutions.

In analysing global civil society's capacity to regulate the emerging global market, analysts of global political economic systems are seriously hindered by two conceptual tendencies. The first conceives global business regulation in terms of hard law consisting of "command and control" legislation backed by the threat of sanctions (Kirton and Trebilcock 2004). Hard law solutions, as both neo-Marxists and neo-pluralists eventually realised in the domestic context, were never as effective in practice in constraining behaviour in either socialist or capitalist systems. In socialist systems, scarcity caused by administrative allocation led to corruption, black market operations and the large scale flouting of legislation in the struggle to survive. In capitalist systems, hard law solutions are either initially compromised by industry lobbying or become weak over time as business buys the politicians it needs to secure its desired outcomes (see Lindblom, 1982). In neither case do hard law solutions result in adequate domestic legislation from a social, environmental and economic perspective.

The second conceptual tendency is to treat global civil society somewhat homogenously, failing to distinguish among the myriad of actors operating in this sphere. For analysts not under the thrall of the state and interested in exploring the sphere of "non-state actors", few sophisticated typologies exist. In this article, I focus on one specific global civil society organization—the Forest Stewardship Council—and examine its formal organisational features to demonstrate two key points. First, the uniqueness of FSC's organisational structure, constituting it as a *sui generis* institution in the world of global civil society; and second, its fitness to regulate the emerging global forest "polity", reconceptualized in non-spatial terms for the new, globalising world.

The paper proceeds as follows: first, I introduce the background to global civil society action on standard setting via certification and labelling, examining the rise of the Forest Stewardship Council as an institution. Next, I outline the institutional structure of the FSC by comparing it to the institutions of conventional representative democracies. This analysis demonstrates considerable parallels between FSC and

representative democracies enabling it to labelled a new form of global democratic corporatism. I argue that GDC is better fitted, in fact, to regulating the global market system than existing national or international institutions. Its effective operation requires, however, an expansion of our political imagination. In an era of globalisation—and with increasing numbers of humanity enjoying good levels of discretionary income—is no longer sufficient to conceptualise the political as situated within states and separate from market behaviour. From a social and environmental point of view, every purchase is a political as well as an economic act and we are now moving into an era when many consumers can exercise a political choice by buying certified over uncertified produce. Future global politics will not be merely about the outcomes of votes within states, therefore, but about the outcome of votes in the market as those who wish the world to be different vote for change on a daily with their pocket books.

The History of Certification and Labelling
There is nothing new about labelling products so that consumers can discriminate one from another. This is, after all, what marketing and branding are all about. Companies develop brand names and logos to inculcate consumer loyalty for otherwise "like products". Such marketing schemes link the brand or logo with particular features of the product and/or the company (such as quality, value-for-money, service) in an effort to establish and protect their share in oligopolistic markets. While its purpose is very different, small-scale producers adopted a similar approach in the 1970s to market organic produce. Quite quickly, a wide variety of local and regional organic labels emerged generating disputes over what constituted proper organic production and who was entitled to use the organic logo (Guthman 1998). These disputes proved difficult to resolve because, unlike private companies, the organic agriculture movement was fragmented both geographically and organisationally, and lacked a centralised body to coordinate and harmonise standards.

As the organic movement grew in size and sophistication, practitioners in different regions met to develop baseline standards. The development of common standards logically entailed a process of certification to ensure that farmers were conforming to them. In the 1980s, there were several initiatives in different countries to develop regional and national baseline standards, a process linked up internationally through the International Federation of Organic Agriculture Movements (IFOAM). IFOAM developed a set of international standards for its accredited certifiers when considering a farmer's request to be certified organic. The organic movement remained peripheral to mainstream industrial agriculture until the early 1990s, when it experienced a significant expansion as a consequence of several highly publicised food scares in the US and Europe. Until then, it was largely viewed as an unnecessary endeavour engaged in by visionaries and cranks (Guthman 1998, 136). Moreover, most organic produce was sold in local markets and did not compete head-to-head with industrial agriculture, especially in overseas markets. This is still largely the case, although there was a marked increase in the international trade in organic produce in the 1990s, and a consequent increase in industrial agriculture's attempts to appropriate the practices and the label, often through government regulation of organic standards (Guthman 1998).

Meanwhile, in the forestry context, the primary focus of activists during much of this period was tropical deforestation. Not only was forested land being replaced with

plantation agriculture as a consequence of government-sponsored development programs, but the evidence suggested that timber barons were recklessly logging the forests without any management plans leading to biodiversity loss, soil erosion, and riparian destruction. In 1983, these issues were brought to the attention of the newly established International Tropical Timber Organisation (ITTO) by a large number of civil society organisations including the World Wide Fund for Nature (WWF), Friends of the Earth, and Survival International (Gale 1998). At the outset, there was a great deal of hope that the ITTO would be able to halt the destruction and degradation of the tropical rainforests, but by the late 1980s that hope had evaporated. By then, it was clear that the ITTO was hamstrung by political compromise and unable to take decisive action while a second initiative, the Tropical Forestry Action Plan, was also failing.[2]

In England, where many tropical timber activists were concentrated, a small group began to explore the idea of using certification and labelling to improve tropical forest management. Koy Thompson, a forest campaigner with Friends of the Earth (UK), and Tim Synnott of the Oxford Forestry Institute, became intrigued with its potential. In 1988 they developed a feasibility proposal, endorsed by the UK's Overseas Development Administration (ODA), to explore the matter. ODA forwarded their proposal for funding to a 1989 meeting of the ITTO, where it ran into a storm of criticism from tropical timber producing countries and the timber industry, who feared that eco-labels would be a barrier to trade, encouraging consumers to substitute temperate for tropical timber.

Thompson and Synnott's proposal was substantially "reformulated" at the 1989 ITTO meeting to address the concerns of producing country members. It is at this point that the history of forest certification starts to bifurcate. Along one path, the ITTO funded consultancies on the potential of forest certification. One early report on "incentives" for sustainable forest management was conducted by the Oxford Forestry Institute, but it largely ignored the option of certification and labelling, focusing instead on the feasibility of imposing a national levy (Oxford Forestry Institute 1991). A second study commissioned by the British Government through the London Environmental Economics Centre (LEEC) was more holistic. Completed in 1993, the LEEC study concluded that certification and labelling could be a small, but positive, incentive for sustainable tropical forest management. LEEC proposed that governments consider sponsoring national certification schemes, but this suggestion met with strident opposition from developing countries and the forest industry assembled at the ITTO. The producing countries as a group were so opposed to considering certification and labelling that they forced interested ITTO members to debate the matter in a special meeting organised outside of ITTO's regular session. The most the ITTO could do was to monitor the issue of certification and labelling, an activity it effectively accomplished by commissioning regular consultancy reports on the topic (Ghazali and Simula 1994, 1996 & 1998; Eba'a and Simula 2002; Pinto de Abreu and Simula 2004; Simula et al 2004).

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[2] The Tropical Forestry Action Plan was the combined initiative of the Food and Agricultural Organization of the United Nations, the United Nations Development Program, the World Resources Institute and the World Bank.

While these initiatives were unfolding at the ITTO and in England, certification was being moved forward in North America via the establishment, in 1989, of the Rainforest Alliance's SmartWood Program. They were joined in the early 1990s by another certifying body, Scientific Certification Systems, operating out of Oakwood, California. Both groups used their own standards to certify forests, with SmartWood being the first to commence operations in 1990. As the number of certifiers grew—the Soil Association and Societe Generale de Surveillance (SGS) also began to certify operations in the early 1990s—concern developed over the proliferation of standards of "sustainable forestry management". At about this time, too, Herman Kwisthout, a bagpipe producer in Britain and manager of a timber import business, the Ecological Trading Company, began to inquire about the sustainability of the tropical timber he was importing from developing countries for the wooden components of his instruments. His inquiries with the Rainforest Foundation and, later, WWF about ways to secure the sustainability of tropical timber were a catalyst for action, as was the failure of the United Nations Conference on Environment and Development to negotiate a global forest treaty. By 1992, the ITTO consultancies had provided a theoretical rationale for forest certification, while the SmartWood Program, Scientific Certification Systems and others had demonstrated its practical feasibility. What remained to be achieved was the integration of the emerging separate, certifier-based programs into a more coherent, global forest certification system.

The spark for this global initiative came from a somewhat obscure Californian group called the Woodworkers Alliance for Rainforest Protection (WARP), which in the early 1990s had become concerned about the proliferation of certifying-body labels and proposed the establishment of an international forest stewardship council to ensure international standardization. WARP considered a proposal by Kwisthout to establish an International Forest Monitoring Agency and this suggestion spawned the formation of an interim FSC Board in 1992, which was funded by WWF and supported by the Rainforest Alliance's SmartWood program.[3]

The challenge confronting the FSC Interim Board was daunting: to create a global certification network linking interests in North and South America, Europe, Asia and Africa. To this end, complex negotiations were undertaken with a range of stakeholders and certifying bodies throughout 1992 and into 1993. These culminated in the founding of the Forest Stewardship Council at a difficult meeting in Toronto, Canada, in October 1993. Some environmental and indigenous groups were furious that industry representatives had been invited to attend and were eligible to vote (Hammond 1993). They worried that industry would take control of the FSC, dilute its Principles and Criteria, and perpetuate business-as-usual forestry. This concern extended to the draft FSC Principles and Criteria, which were viewed by some environmental and indigenous groups as too industry-friendly. Although at one point the meeting looked like it would end in deadlock, eventually a compromise occurred. An organizational structure designed to preclude industry dominance was agreed upon

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[3] Members of the FSC Interim Board were Julio Centeno, Chris Elliott, Debbie Hammel, Dagoberto Irias, Dominique Irvine, Alan Knight, and Andrew Poynter. The Interim Board was broadly representative of what later came to be FSC's three chambers, with Centeno and Irias representing the South, Irvine representing indigenous people through her role in Cultural Survival Inc., Knight representing industry via B&Q (a major UK building supplies retailer), and Elliott the environmental movement through his role as Forest Officer with WWF International. The Interim Board was assisted by Alan Pierce and Jamie Ervin, and was run out of Burlington, Vermont in the US Northeast.

and a draft set of Principles and Criteria were accepted on the basis that they were subject to ongoing revision and review.

The founding of the FSC was closely monitored by the mainstream forest industry. By 1993, many industry leaders were convinced of the strategic necessity of developing alternative certification schemes. For example, in North America, the Canadian Pulp and Paper Association (CPPA) donated a million dollars to the Canadian Standards Association to develop a Canadian scheme based on an environmental management standards approach adapted from the International Organization for Standardization (ISO). At about the same time, the American Forestry & Paper Association established what became the Sustainable Forestry Initiative. In Indonesia, efforts commenced to re-invigorate the development of a national eco-label, culminating in the establishment of Lembaga Ekolabel Indonesia. In the United Kingdom, pressure mounted on the Forestry Commission to develop a British Standard. Following the development of an FSC-UK Standard in 1998—and as a consequence of the peculiar structural features of Britain's timber industry interacting with the policy entrepreneurship of a small number of key individuals—stakeholders eventually translated the FSC-UK Standard into a British national standard—the UK Woodland Assurance Scheme (UKWAS)—in 1999.

Today, while there is a plethora of forest certification schemes worldwide, the most rigorous by far remains the FSC. Unlike its industry- and state-sponsored imitators, FSC can make good claims to legitimacy in terms of its institutional arrangements, which are set out in detail in the next section.

The Forest Stewardship Council
On paper and in practice, no other forest certification scheme rivals the Forest Stewardship Council (FSC) for the sophistication and complexity of governing arrangements. To achieve the ambitious aspirations articulated in its Principles and Criteria, it has combined a complex global democratic architecture with a deep deliberative process to promote dialogue, equality, and transparency. By deploying an array of constitutional checks and balances, FSC responds to the identified needs and priorities of its constituents. Given the diverse interests housed within this organizational structure, including the ever-present North-South tension, the magnitude of the challenge that this entails——to mediate disputes and oversee standards harmonization and to continually update its regulations and procedures to take account of emerging knowledge and stakeholder concerns—can scarcely be overstated.[4]

In this paper, I undertake the task of understanding and characterizing the institutional form of the FSC-IC by examining its formal architecture and deliberative processes. In this regard, the extent to which the FSC model emulates and elaborates established constitutional norms and mechanisms of democratic states is striking. Adopting the lens of comparative constitutionalism, it becomes apparent that the FSC emulates the architecture and processes of modern democracies from the duties it imposes on

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[4] Recently, for example, it set up a Plantation Review Policy Working Group (PRPWG) to consult FSC members *and* the wider forestry community about FSC's approach to plantations. The working group, which consists of twelve members balanced between chambers and across the North-South divide, is engaging in global consultations prior to finalising recommendations for FSC-IC's Board of Directors.

members (e.g. to affirm and uphold its Principles and Criteria and By-Laws) to the various roles and responsibilities assigned to its 'Executive', 'Legislative' and 'Judicial' branches, to the exercise of its regulatory and dispute resolution functions. The paper is structured around the four basic elements of any constitution: a preamble, an organisational chart, an amending clause and a bill of rights. According to Landis (1987, 60), a preamble sets out "the goals and principles of the polity" in motivational and rhetorical language. The organization chart, in contrast, provides a "power map of the polity", delineating "whether the political institutions are to be federal or unitary, presidential or parliamentary in nature", and which tasks are to be performed by which level of government (Ibid). The purpose of the amending formula is to enable constitutional adjustment to changing circumstances over time, with amending clauses "often made difficult to use, on the assumption that the 'supreme law of the land' should not routinely changed or manipulated (Ibid). Finally, constitutions often include a bill of rights that are designed to set out the fundamental rights and freedoms that a citizen is permitted to enjoy. Using this framework, it becomes abundantly clear just how "state-like" FSC is in structure, especially in its efforts to establish a set of governance checks and balances within its constitutional provisions to prevent single-interest, single-state or Northern domination.

FSC's 'constitution' is written down in two foundational documents, its Statutes and By-Laws,[5] which together establish its vision, structure and process for amendment. There is no bill of rights, but in this FSC is no different from many other states. The Canadian Constitution lacked a Bill of Rights until 1960, and that Bill was later superceded by the Charter of Rights contained in the 1982 Constitution. The Australian Constitution currently lacks a bill of rights, a source of concern to many there in the increasingly illiberal era dominated by the "war on terror". And even the original American Constitution lacked a bill of rights although this was quickly changed in 1791 with the adoption of the ten amendments to guarantee basic civil and political liberties such as free speech, freedom of assembly, and freedom from arbitrary arrest and detention. In terms of comparative constitutionalism, at the present time a formal bill of rights can be considered a desirable as opposed to an essential component.

Preamble
The purpose of a constitution is to found a state consisting of a "people" occupying a given territory over which sovereignty is exercised. Perhaps the best known, if rhetorical, example of a preamble is that from the US Constitution, which states that, "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America" (National Archives 2006). In contrast, the original Canadian Constitution is more prosaic, observing simply that several provinces have "expressed their desire to be federally

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[5] An thoroughgoing account of FSC's constitution would involve consideration also of the myriad policy statements, manuals, resolutions and rulings issued by the General Assembly, Board, and Secretariat. Such an exercise cannot be undertaken here, however, and the paper has a more modest purpose, which is to use the lens of comparative constitutionalism to examine FSC's formal governance arrangements as contained in its Statues and By-Laws.

united into one dominion".[6] Notably, however, neither preamble indicates how "the people" came to be formed, preferring to presume the prior existence of Americans on the one hand and Canadians on the other.

In an analogous manner, FSC-IC presumes the existence of a global forest polity in its By-laws and Statutes. Noting that the purpose of the association is to "promote an adequate management of forests", the statutes specify the contours of this polity as consisting of "developers of forest management policies, forest managers, legislators, and to any other person interested in forest management". Unlike states, however, FSC constitutes a voluntary not a compulsory polity: individuals, associations and companies apply for join the FSC. If accepted, members have voting rights and may stand for election to the FSC-IC Board of Directors. Those who join the FSC "polity" endorse a vision of global forestry as "environmentally appropriate, socially beneficial, and economically viable management of the world's forests". Notably, this vision does not specify forest type (boreal, temperate, tropical), scale of operation (small, medium, large), kind of enterprise (family farm, woodlot, cooperative, private firm, public corporation), or location (North or South). The absence of any qualifiers implies that no forest management operation is excluded a priori from achieving FSC-IC's vision and that FSC certification should be available to all regardless of size, kind, location or forest type.

Early on, members involved in formulating a regional standard for BC do not appear to have appreciated the broadness of FSC-IC's vision. Many of those drafting D1 viewed FSC certification as applicable only to small-scale, ecoforestry operations under individual ownership or community forestry associations. Such individuals found it difficult to conceive of large industry ever meeting the requirements of FSC certification, since the defining attributes of ecoforestry[7] were simply incompatible with industrial forestry management.[8] This tension between visions—boutique versus general store—existed up until the 2002 FSC General Assembly where several advocates from BC sought to entrench a more forthright vision of ecoforestry at the international level and proposed a series of resolutions to give it effect. These resolutions were defeated, however, by the majority of those present, including representatives from indigenous and environmental constituencies.[9] It was at this

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[6] The first lines of Preamble to the Constitution Act 1867 are "Whereas the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom…" (Government of Canada, Department of Justice 2006).

[7] Ecoforestry is low-impact forestry that uses landscape-level planning, large scale set asides for biodiversity conservation, wildlife corridors to ensure connectivity, selective logging of a small number of stems, adaptive management and so forth to achieve its objectives.

[8] Industrial forest management is high-impact forestry that minimises reserves, adopts clearcutting as its preferred silviculture technique, replanting the land with trees to create semi-natural forest or plantations with the aid of chemical fertilizers, pesticides and herbicides.

[9] For example, Lisa Matthaus (Sierra Club of British Columbia, Environmental Chamber) proposed a motion, seconded by Will Horter (individual, Economic Chamber) and Nicole Rycroft (Clayoquot Progressive Ventures, Social Chamber), to add a reference to the precautionary approach in the Introduction to FSC's P&Cs reading: "Interpretation of FSC Standards should reflect an understanding that they are intended to be precautionary in nature". After discussion, the motion was rejected by an "overwhelming majority". Another motion on harmonization - proposed by Cheri Burda (David Suzuki Foundation, Environmental Chamber,) and seconded by Ananda Lee Tan (Canadian Reforestation & Environmental Workers Society, Social Chamber and Rycroft - was postponed after discussion and overwhelmingly rejected when reintroduced the next day.

point that many closely associated with FSC-BC realised that FSC's vision included large producers and that further negotiations would be required to adjust the bar established in D3 to secure their acceptance.

Organisational Chart
In addition to a Preamble referencing a polity and setting out a vision statement of its purpose and values, a key purpose of constitutions is to set out the basic structure of government in an organisational chart. Democratic constitutions set out whether the polity is to be governed by a unitary state or federally, by a single legislative chamber (unicameral) or two (bicameral), by a prime minister or a president, and by an appointed or elected judiciary. The process required for legitimate policy making may also be implied or specified. The general purpose of democratic constitutional provisions is to ensure that those in power are accountable to the people. Important mechanisms to achieve this are to provide for elections, divide power among different institutional elements of the system and establish a system of 'checks and balances' to prevent those in power using the state to oppress the people.

In both parliamentary and presidential models, constitutions vest considerable power in the executive branch of government—the Prime Minister and Cabinet in Canada, or the President and White House staff in the US. Executive power is deliberately offset, however, by countervailing forces in other parts of the system. In federations, these reside in sub-national levels of government that have exclusive jurisdiction in some legislative areas and co-responsibility in others. Since neither level of government can abolish the other, disputes must be negotiated or adjudicated through a high or supreme court. Unitary systems of necessity lack this federal division of power, but along with federations make use of another mechanism—the separation of powers and the establishment of systems of "checks and balances"—mostly notably by distributing power to the legislature, executive and judiciary. In formal constitutional terms, the role of the executive is to propose policies and implement legislation; of the legislature, to consider legislative proposals and pass, amend or block them; and of the judiciary, to interpret and rule on their legality.

The above sketch will be familiar to many readers. In order to examine FSC-IC's arrangements, we need to focus likewise on the division and separation of powers established by its constitutional documents. In the following discussion, we first consider the division of powers in the FSC, observing that although it was established as a "unitary" system, it does have several "federal" features, notably a system for devolving responsibility to the regional and national levels. Then we consider the separation of powers within the FSC between its legislative, executive and judicial elements, examining how these interact in the making of the FSC policy.

Division of powers
Governments are unitary when power is vested in a single centre, and federal when it is divided among several geographic regions (i.e., states, provinces or territories). FSC-IC's founding documents provide for a unitary structure, but one that over time could be increasingly devolved. Paragraph 71 of the By-Laws states that, 'FSC shall encourage and support national and regional initiatives which are in line with the FSC mission' and this it has done over the years. National and regional initiatives take several different forms: an FSC-IC-appointed contact person, a national working

group, national advisory board, or a national or regional office.[10] The By-Laws give only the broadest outline of the responsibilities of each arrangement.[11] While a Contact Person is appointed by FSC-IC, national working groups are self-constituted, their primary purpose being to facilitate consultation. An advisory board, on the other hand, is elected by nationals, is similar in composition to FSC-IC, and has a more specific range of tasks. These include promoting FSC and its mission; providing information, support and services; maintaining ongoing consultation on certification; facilitating and overseeing the process of developing national (and sub-national) standards; and reviewing and making recommendations to FSC-IC on national certifying bodies (CBs) seeking FSC accreditation. A national office may be established wherever an advisory board exists and CBs are active. A national office relates to the national advisory board in the same way as the FSC-IC Secretariat (staff) relates to the FSC-IC Board—it is the bureaucratic arm of the national board.[12]

The basic division of powers between FSC-IC and initiatives, whether regional or national, is set out as a positive list of rights that provide FSC-IC with final approval of standards and accreditation of CBs, control over the use of FSC's name and logo worldwide, power to determine the category under which an initiative is established, and, crucially, the right to withdraw recognition. The only obligation placed on FSC-IC is to consult with national and regional bodies prior to undertaking activities in a country or region. These several rights combined with a single obligation clearly grant FSC-IC pre-eminence over initiatives at lower levels, including the potentially coercive power of withdrawing recognition from any initiative that does not comply with FSC-IC requests. Despite this, there are numerous rights and obligations that are not clearly set out in FSC-IC's constitution, creating unresolved tensions between different organisational levels. One of the most important of these is 'taxation' power—the right to raise and distribute funds to run FSC's operations. Since the By-Laws are silent on the issue, the presumption is that national initiatives have the power to raise and spend their own money and this they have certainly done. However, competition for donor funding between international and national bodies, especially in North America, has occurred and greater clarity on how regional and national initiatives are to be funded and FSC-IC's responsibilities in this regard is required.[13]

In the FSC-BC case, we noted that a great deal of confusion existed at the outset as to the status of the FSC-BC Regional Initiative in relation to the FSC-Canada Working Group and FSC-IC. Many provincial members viewed FSC-BC as quasi-autonomous

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[10] FSC Regional Offices (Africa, Asia, Europe and Latin America) act as service centres for national initiatives, and support FSC processes in countries without national initiatives. Canada, China, Russia and the US are also considered regions due to their size (FSC-IC 2003).

[11] For example, a contact person "shall collaborate with FSC to distribute information regarding the organization and its mission and to promote discussions on certification within the country or region concerned," but the By-Laws provide very little guidance regarding how this individual should be appointed and the nature of their relationship to national FSC members.

[12] The FSC-IC By-laws and Statutes spell out this relationship in some detail.

[13] The tensions between National Initiatives and FSC-IC are evident in a recent report by a self-constituted National Initiatives Task Force. Arguing that FSC is a "tool" used by others to achieve their objectives, the Task Force makes far-reaching suggestions for change in FSC governance arrangements. At the centre of the Task Force's concerns, however, are the current FSC-IC revenue model and the absence of any requirements on FSC-IC to distribute funds collected centrally to National Initiatives. A central recommendation of the Task Force is to replace Naitonal Initiatives with Field Offices, which we be funded centrally (National Initiatives Task Force 2005).

with a de facto right to report directly to FSC-IC rather than FSC-Canada. This separatist ethos was related to the almost simultaneous emergence of both organisations after 1996 and greatly strengthened by FSC-BC's fundraising capacity, which outpaced FSC-Canada's in the early stages. Lack of funds, a small staff, and a remote FSC-Canada Board meeting infrequently in Ontario all contributed to a perception within FSC-BC that it should make its own decisions and report directly to FSC-IC. From 2001 onwards, however, FSC-Canada—hardened by managing the FSC Maritimes dispute and under increasing pressure from FSC-IC to exercise a Canada-wide mandate—worked consistently to integrate regional initiatives into a more explicit organizational hierarchy. By the time D3 arrived at FSC-IC in the summer of 2002, BC's separatist ethos was waning with regional members increasingly, if reluctantly, accepting the role and legitimacy of FSC-Canada and FSC-IC. Indeed, there is clear evidence of a winding down of the FSC-BC Steering Committee from at least the middle of 2003, although it remained formally constituted, and arguably still does today.[14] However, the separate FSC-BC website has been replaced with the FSC Canada site and the regular meeting minutes and announcements are no longer available.

Separation of powers: executive, legislature, judiciary
In western liberal democracies, power is typically allocated among three branches of government: the legislature, executive and judiciary. A pure separation of powers would see citizens elect each body, but in practice this rarely occurs.[15] Power is fused also in the FSC system, which lacks the equivalent of a legislature to debate policy. In the absence of a legislative assembly, FSC's executive and legislative powers are largely fused in the elected, nine-member FSC-IC Board, which develops, debates, interprets and implements policy in conjunction with the FSC-IC Secretariat. The Board is not entirely separate either from FSC's equivalent of a 'judiciary', the six-member Dispute Resolution and Accreditation Appeals Committee (DRAAC). The Board appoints the DRAAC, which is constituted according to specific membership criteria for ensuring chamber, North/South, and regional balance.[16] In this section, we review this relative fusion of powers in the FSC, highlighting areas where more separation may be desirable between its legislative, executive and judicial branches.

Executive Government
In parliamentary government, the executive consists of the Prime Minister and Cabinet (PM&C) and an extended bureaucracy organised into ministerial portfolios.

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[14] FSC-Canada's website gives a list of members of the FSC-BC Steering Committee "as of January 2004" and there is no evidence this has been subsequently undated (http://www.fsc-bc.org/SC_Members.htm). Jessica Clogg is listed as Co-Chair of the FSC BC Steering Committee on an FSC Canada Media Advisory of 30 March 2006, announcing a meeting of FSC members in BC to celebrate FSC-IC's accreditation of the FSC-BC Final Standard (FSC-Canada 2006).

[15] In the US, for example, executive government (the President, secretaries of state and the wider bureaucracy) is elected separately from Congress (House of Representatives and Senate) and the President is not permitted to introduce legislation directly into US Congress, requiring it to be sponsored by a member of congress. However, in neither presidential nor parliamentary systems is the ideal separation of powers achieved. In parliamentary systems, power is fused because the prime minister and senior ministers hold seats in parliament rather than being separately elected. In the US, even though the separation of powers was an explicit concern of the founders, Supreme Court justices are nominated by the White House and appointed by Congress not elected by the citizenry.

[16] DRAAC membership must be composed of one member from each of the following six regions: North America (including Mexico); Central and South America and the Caribbean; Europe; Australia and Oceania; Asia; and Africa (see Para. 72, FSC By-Laws).

Bureaucrats, ideally, provide "frank and fearless" advice to ministers about the consequences of different policy options, with the PM&C determining the actual course of action. A similar split exists at a formal level in FSC-IC's executive between its "political" and "administrative" branches. Policymaking is formally the responsibility of FSC-IC's nine-member elected Board representing diverse constituencies and regions, while implementation is the responsibility of the FSC-IC Secretariat, consisting of its Executive Director and staff, which may also propose policy initiatives to the board for discussion and approval. Just as in analysis of government, however, this formal distinction between political and administrative rule frequently breaks down in practice, with bureaucrats involved in policymaking and Board members overly interested in implementation and regulation.

While the FSC-IC Board can be compared in terms of function to the operation of a political executive, the analogy breaks down across other dimensions. Unlike governments, for example, FSC-IC Board members are not full-time policy makers paid to consider the peoples' business. Most, in fact, conduct their work on a part-time and voluntary basis, splitting themselves between service to FSC and regular paid employment. The voluntary nature of the Board generates management difficulties in meeting on a timely basis and coping with the heavy workload. Because FSC is a global organization, some Board members find themselves travelling considerable distances to attend international meetings, entailing even more work time. In addition, and unlike government executives, the FSC-IC Board conducts its business across different interests, culture, languages and levels of development. These differences make it difficult for the Board to cohere as a single unit, in contrast to a cabinet where prime ministerial authority, party affiliation, frequent meetings, cabinet secrecy and fear of the opposition create a strong sense of solidarity. Many of FSC-IC's management difficulties were aired in a 2001 Change Management Team Report, which identified inexperience and lack of training as impediments facing new Board members as well as a general tendency for Board members to over-involve themselves in technical matters—such as reviewing individual national standards—at the expense of strategic considerations. The Change Management Team recommended that roles and responsibilities of the FSC-IC's Board should be redefined with the aid of NGO management experts.

In addition to these managerial challenges, the usual organisational tension exists in FSC between those officially responsible for making policy and those charged with executing it.[17] Such friction was evident between the FSC Secretariat and the FSC-IC Board following FSC-Canada's approval and forwarding of D3 to FSC-IC. The bureaucratic arm of FSC-IC, its Accreditation Business Unit (ABU), had the role of reviewing all draft standards to ensure they conformed to a set of pre-established technical requirements. The ABU formed the view using its standard internal checklist that D3 was too long, detailed, unclear and prescriptive. D3 along with ABU's draft report was circulated to FSC-IC's Standards Committee, which had been

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[17] This tension constituted the essence of the hit British television comedy, "Yes, Minister", with a subversive bureaucracy personified by Sir Humphrey Appleby confronting a willing, but incompetent political leader in the shape of Jim Hacker, Minister of Administrative Affairs. "Yes, Minister" captured the culture of the "Old" approach to managing public service in the 1950s-60s, that was dismantled in the 1980s-90s under the guise of the "New Public Sector Management". This movement saw politicians reassert power over bureaucrats by increasing the number of political appointees, by removing some of the protections in the contracts of senior civil servants and by hiring from outside the public service entirely.

established only six months previously to reduce board members' workload and involvement in the technical issues of standards review and approval. Some members of the SC were unhappy with the ABU report, however, viewing it as unfair and unduly influenced by industry lobbying. Rather than accept the ABU's view, and recognising also the controversial nature of D3, they chose to refer it instead to the full FSC-IC Board for further consideration.[18]

The ongoing tension between political and bureaucratic arms of an executive is also due to a board's hiring and firing power. Governments have increasingly sought such power over the past two decades introducing new public sector management arrangements to ensure greater bureaucratic responsiveness to political decisions. FSC-IC's Board has the power to hire and fire FSC-IC's senior bureaucrat, its Executive Director (ED), with three holding office since the organisation's founding: Tim Synott (1994-2000), Maharaj Muthoo (2000), and Heiko Liedecker (2000 to present). All three have experienced difficulties in office. Synott became enmeshed in the dispute over the approval of the FSC-Maritimes Standard, feeding mounting industry concern that its protests were being ignored by announcing the Standard's accreditation just before Christmas 1999. Muthoo lost the confidence of the Board after a short period of six months due to his non-consultative style, illustrated in the Secretariat's sudden announcement of an in-principle agreement with the Ontario Ministry of Natural Resources (OMNR) to certify all of the province's Crown forestlands with very little if any consultation with FSC Canada members.[19] As Muthoo's deputy at the time of the OMNR debacle, Liedecker took over on an interim basis and was later appointed following a search and interview process. Liedecker has performed quite well to date, ably assisted by the organisation's relocation to Bonn, Germany, the increasing standardization of FSC's arrangements with respect to policy development and standards approval and ongoing efforts by the Board to clarify the nature of its role and maintain the line between policy development and administration.

Legislative Arrangements
A key role of any political system is to pass legislation through parliament establishing the law of the land in a specific issue area.[20] In parliamentary systems, legislation is introduced and subjected to three "readings" although the first and last reading tend to be pro forma. Under the practice of "responsible government", derived from British historical experience, in theory the executive proposes legislation that is then extensively scrutinised and debated by the entire parliament, where necessary amendments are passed prior to approval. Notions of responsible government are

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[18] Established as per the Change Management Team Report recommendations, and composed of David Nahwegahbow (Social Chamber), Grant Rosoman (Environmental Chamber) and Mok Sian Tuan (Economic Chamber).

[19] The decision appears to have been taken by Muthoo alone, without consultation with either FSC-Canada or the FSC-AC Boards. The resulting international furore within various levels of the FSC system prompted Muthoo's resignation only 6 months after his appointment as FSC-AC ED.

[20] The governmental process is complex but in most parliamentary systems involves: the cabinet agreeing to introduction of legislation in a particular area; a minister working with his political advisor s and senior bureaucrats to draw up a bill and introduce it into parliament (First Reading); a Second Reading where the bill is debated and amended by parliament either in plenary or committee; a Third Reading to confirm final content, consideration by an Upper House, possible amendment, and proclamation by a governor general or equivalent; and publication of the new legislation in the Gazette establishing the date it comes into force.

seriously compromised by the rise of the party system and today the PM&C can almost always secure the passage of legislation with as many or few amendments as it decides to allow. Matters are different when there is an active upper house of parliament, as in the Australian system, where senators do perform an effective scrutinizing role. Legislation which easily passes the lower house because the government "has the numbers" can encounter serious criticism and require significant amendment if the upper house is more independent and represents a wider diversity of interests and values.

A sophisticated system of national legislatures is absent in FSC. Instead, the policy-making function is split between the General Assembly on the one hand and the Board on the other. It is the responsibility of the Board to implement resolutions passed at General Assembly, but the thoroughness to which this is done depends on the degree of Board enthusiasm for a particular proposal. Between General Assembly meetings, the Board makes policy decisions on its own or with the assistance of specially appointed committees, such as the recently formed Plantation Policy Review Working Group to consult FSC members and the broader global forestry polity on options. Committees such as the PPRWG are constituted following consultations within FSC's six subchambers and according to subchamber processes. In the case of the Environment North subchamber, for example, three candidates were nominated (Cadman, Kill and Palola) with Cadman and Kill elected in the subsequent round of informal, email voting.[21]

Why did FSC not adopt an equivalent of a legislature? There is no easy answer to this but it likely reflects a desire to establish an organization that would not require large-scale operational costs. Operational cost was certainly a concern of the Interim Board in the early 1990s when, following advice from James Cameron concerning the dangers of potential openness and the costs, it revised the draft Charter to alter the structure of FSC from an association to a foundation (Synnott 2005, 23).[22] A foundation was deemed to be less costly institutional arrangement than a membership body requiring General Assembly meetings every three years. Certainly, there is not doubt that a legislative body mediating between the General Assembly and the Board would be costly since it would be required to meet much more frequently than a General Assembly and be much larger than the current Board. Whether these pragmatic consideration should outweigh those linked to concerns over democratic accountability is a matter to which we return in the conclusion.

While legislation determines the broad parameters of a regulatory regime, it cannot provide for all possible circumstances and the bureaucracy is tasked with drawing up regulations that govern how it is to be implemented. In the FSC system, a similar distinction exists between policy and regulation with the elected FSC-IC Board determining a course of action and the FSC-IC Secretariat implementing it. The

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[21] See email from membership@fsc.org to Fred Gale on the subject "Selection of Northern Environmental Chamber representatives for FSC Plantations review - Deadline December 20th", 9 December 2004.

[22] Synnott (2005, 23) writes: "According to the [Interim FSC Board] Minutes, he [James Cameron] warned that a decision-making mechanism that depended on frequent General Assemblies and a relatively open membership would be unwieldy, expensive, and a severe limitation to the flexibility and decision-making capacity of the secretariat, and it would put at risk the balance of stakeholder interests"

adoption of the Policy for preliminary accreditation of national/regional forest stewardship standards[23] is a good example of how this system operates in practice. The impasse that developed over D3 in 2002 led actors at all levels of FSC to search for an "extraordinary solution", culminating at two meetings at the 2002 General Assembly involving members of FSC-IC, FSC-Canada and FSC-BC. The notion of preliminary accreditation was broadly accepted at the second of these meeting, with the FSC-IC Board formally approving the principle at its subsequent meeting. Responsibility at this point for the policy's development was turned over to the Head of the Policy and Standards Unit, Matthew Wenban-Smith, who sought advice from a consultant, James Sullivan, on its utility and feasibility. Wenban-Smith subsequently submitted a detailed proposal on the policy and how it would work to the FSC-IC Board in early 2003 for approval and implementation.[24]

Should the FSC General Assembly have been consulted on the new policy for preliminary accreditation? The question is interesting because it helps clarify the roles of the FSC-IC Secretariat, FSC-IC Board and General Assembly in constitutional change, policy-making, regulation and implementation. Preliminary accreditation was not a constitutional issue, since it did not alter FSC-IC's fundamental documents—its Statutes and By-laws. Hence, there was no formal role here for the General Assembly. Preliminary accreditation did, however, necessitate a change in FSC's arrangements for implementing certification and required Board authority to formulate the new policy.[25] Once that authority was obtained, it was up to the Secretariat to implement the new arrangements, adjusting existing regulations and generating new ones to achieve the policy objectives.

While the above analysis captures core elements of the different roles performed by FSC-IC's General Assembly, Board and Secretariat, it is evident these roles are not completely separated. In this it mirrors the actual operation of government, where the bureaucracy are often heavily involved in policy-making, while Cabinet is often quite concerned about implementation. In FSC-BC case, members of the bureaucracy were heavily involved in conceptualising and championing the idea of preliminary accreditation. Jim McCarthy, FSC-Canada's ED, building on extensive experience with the Canadian Standards Association (CSA), was especially influential, proposing the idea at the FSC-BC level, explaining it to officials at FSC-IC, defending it at two General Assembly meetings in 2002, and generally working to have the concept accepted as a way out of the impasse.[26] Discussions occurred between McCarthy and Liedecker to overcome anticipated opposition in the South to exceptional arrangements for the North, it being agreed to present preliminary certification as a potential solution to standards development elsewhere.

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[23] FSC Policy Document FSC-POL-01-002, approved 22-Mar-2003.

[24] Matthew Wenban-Smith served as Head, FSC Policy and Standards Unit until January 2006, when he left to take up the position of Director of Forest Certification with the British consulting company, Dovetail Partners Inc. See http://www.dovetailinc.org/who.html, accessed June 2006.

[25] While the purpose of FSC-IC is to implement its certification and accreditation system for "environmentally sustainable, economically viable and socially beneficial" forestry, the Statutes and By-Laws are silent on exactly how this shall be done.

[26] Excerpted from FSC-Canada letter to Leidecker (FSC-IC ED), November 2002.

Judicial Arrangements

In a national political context, disputes invariably arise between citizens that require adjudication. Democracies manage such conflicts via an independent judicial system that is designed to mediate, arbitrate and pass sentence on the cases brought before it. Within the liberal democratic model, the judiciary is expected to operate at arms length from the political apparatus, be free from conflicts of interest, and be impartial in the administration of justice. While not free from corrupting influences—notably the capacity of the rich in liberal democracies to "buy" justice at times by hiring the best lawyers and to continue with litigation until others with fewer resources are bankrupt—the system works to deliver an element of justice at least some of the time. While FSC has adopted its own dispute resolution system to handle conflict within the FSC system, there is a general consensus that it is not working well and needs substantial reform. In this section, we review the structure and operation of FSC's "judicial" branch of governance—its Interim Dispute Resolution Protocol (IDRP) and Dispute Resolution Committee (DRC).

FSC has encountered several high profile conflicts over the years, including over the certification of Leroy Gabon in 1997, the Maritimes Standard (2000), the Allagash certification (2001), the challenge to Maracai, Brazil (2002), the denial of accreditation to KPMG,[27] and of course the difficulties described in this volume in accrediting FSC-BC's D3. Gregory Weber of the McGeorge School of Law, University of the Pacific, has taken a particular interest in FSC's dispute resolution arrangements, drafting its 1998 Interim Dispute Resolution Protocol and reviewing the operation of dispute resolution arrangements over the past decade (Weber 2004 and 2005a). In his recent review and at a Workshop held in Manaus, Brazil in conjunction with FSC's 2005 General Assembly (Weber 2005b, 1), Weber highlights several deficiencies in current arrangements: the system takes too long, contains too many steps and provides insufficiently for conflicts of interest. In addition, FSC-IC lacks capacity to implement it in terms of staff, resources and training.

A key problem with current arrangements is an insufficient separation of powers between FSC's judicial and executive branches. Formally, FSC's constitution and the IDRP provide for the following arrangements in the event of a dispute arising between parties over, for example, the awarding of a certificate by a CB to a company. The complainant appeals in the first instance to the certifying body and, if unsuccessful, may next appeal to its Independent Committee. Should these "informal" arrangements not result in a resolution of the dispute, the complainant may appeal directly to the FSC, which screens the complaint to determine its nature, and if there is no conflict of interest, forwards it to the FSC-Chair to mediate. Failure at this point enables the party to launch a further appeal by referring the complaint to the FSC-Secretariat for screening and submission to the FSC Board for adjudication. The Board may refer the matter to the DRC and, if there is a failure to resolve the matter there, to the General Assembly, which has final authority. It is clear from this description that the process relies heavily on those who are already burdened by FSC work, some of whom may have a vested interest in the outcome. Not only is the

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[27] Gregory Weber, "Report of the dispute resolution workshop, Manaus, Brazil", FSC General Assembly, Manaus, Brazil, 5 December 2005, p. 1.

system itself open to charges of conflict of interest, but its complexity creates significant time delays and expense.[28]

There is general consensus that FSC needs an improved dispute resolution system to the one currently in place. At the recent Manaus Workshop to consider the matter, several alternatives were canvassed ranging from minor alterations to existing arrangements to some that were more far-reaching. Weber outlined four possible models at the meeting, but all appear to fuse judicial and executive power to some degree, potentially jeopardising the independence (real and perceived) of the process. All four models described by Weber, for example, envisage a substantial role for organs of FSC—the ABU, the Board and/or a Board-appointed DRC. Of the several alternative models put forward by participants at the Workshop, only one by Errol Meidinger[29] envisaged the establishment of a new institution—an FSC Disputes Office. While this is not the place to propose a detailed alternative to FSC's dispute resolution arrangements, it is important to note that the general guiding principle governing such arrangements should be to establish a system that is as independent of the executive—FSC-Secretariat and FSC-Board—as possible.

An improved dispute resolution system, however, will have to continue to distinguish between "technical" and "political" disputes within the FSC. This is more art than science, given the inherent difficulty of establishing criteria a priori to distinguish one from the other. The dispute over the Maritimes and BC D3 standards were more clearly political in nature—reflecting significant differences within local negotiating networks over whether an appropriate balance of interests existed on the standards negotiating committees and locally determined negotiating processes had been properly implemented. Other disputes, involving complaints about whether a certifying body should have issued a certificate to a company or not are of a more technical nature. It seems appropriate for FSC to maintain flexibility to determine whether a dispute should be resolved politically via discussion within and between various networks or judicially via, for example, a Disputes Office. Notably, in the FSC Maritimes case, a large-scale Committee of Enquiry was established, chaired by Gemma Boetekees, to determine the validity of claims and counter claims (Boetekees, Moore and Weber 2000). In the latter, as we have noted, the FSC system operated through different levels and networks to identify the Preliminary Certification solution. While a new dispute resolution process is required by FSC, it must be one that is capable of responding flexibly to the type of dispute requiring mediation.

Amending formula

States adopt a variety of arrangements to amend constitutions. In some cases, constitutions can only be amended via citizen referendums, while in others national and sub-national legislatures take the decision according to various rules. In Ireland, for example, constitutional change must first be approved by both Houses of Parliament and then be approved by a simple majority of the electorate. In federal Australia, not only is an absolute majority required in the Commonwealth House of Representatives and Senate to initiate the process, but the resulting referendum must be approved by a majority of the electorate in each of the country's six states and two

> **Comment [SG1]:** Section needs to be added once Weber report obtained.

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[28] Weber (2005) notes that the only case to go through the entire procedure set out in the IDRP was the PT Diamond Raya dispute which took 42 months to complete from the first request for an "informal resolution" was made (April 25, 2002) to the Board's statement of decision on November 8, 2005.
[29] Professor of Law, State University of New York at Buffalo.

territories, and represent a majority of the country's citizens. Constitutional change is somewhat easier in Canada because referenda are not required. Instead, both Houses of Parliament must pass the proposed amendment, which according to the "7/50" rule must then be approved by the Legislatures of at least two-thirds of the provinces and territories representing at least 50% of population.

Within FSC, it is the General Assembly that has authority to amend FSC-IC's By-Laws and Statutes. Paragraph 18 of the By-Laws states that the General Assembly "will normally restrict its decisions to revising the Statutes and Principles and Criteria, admitting and destituting members, electing the Board and being the final authority in dispute resolutions." Although the General Assembly has ultimate authority, the FSC-IC Board plays a gate-keeping role[30] and may block a resolution from proceeding to the General Assembly for vote, although there is no evidence it has ever done so. Similar to other General Assembly resolutions, amendments to FSC-IC's Constitution require the normal super-majority vote of 66.6% in favour to pass, setting a suitably high bar for constitutional change and effectively requiring endorsement by all three chambers.

There is clear evidence that the FSC-BC case prompted parties to seek to alter FSC-IC's Constitution via resolutions to the 2002 FSC General Assembly.[31] Statutory Motion 6, for example, to "clarify FSC decision-making" provided for consensus-decision making[32] to apply at both the international and national levels, "to ensure no significant majority could be overruled."[33] Building on the FSC-Canada case, the clear intent of this motion entailed revisions to paragraph 71: "Guidelines and minimum requirements for national and regional initiatives that are consistent with the vision of the Founding Assembly shall be published by FSC and shall require that national initiatives seek consensus in their decisions." If this motion had been in effect, FSC-Canada could not have approved D3 and forwarded it to FSC-IC. Instead, the matter would have had to be resolved differently—by either referring D3 back to FSC-BC with a request that more negotiations be entered into and consensus reached or by establishing a process at the FSC-Canada level to achieve a similar result.

Bill of Rights
As noted at the outset, FSC's constitution does not contain a formal Bill of Rights and in this it is not any different from many other constitutions, past and present. While it might be thought unnecessary to consider this issue in the context of a mere voluntary "civil society" organization, it is interesting nonetheless to speculate on whether a bill of rights could add clarity to FSC's constitution by setting out, for example, the rights that members have with respect to the other institutions, especially the executive. The purpose of a bill of rights is to safeguard citizens from abuse of state power and likewise, a purpose of a bill of rights or "accountability charter" is to protect members

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[30] Section 81 provides that the Board "shall consider any amendment to these By-laws proposed by a member in writing and seconded by two other members. *If the Board agrees* to the proposal the amendment shall be submitted to vote by the next General Assembly" (our emphasis).

[31] Several FSC-BC representatives travelled to the 2002 General Assembly in Oaxaca, Mexico to propose resolutions embedding the precautionary principle and upward harmonization in the FSC-IC P&Cs in an effort to strengthen the case for D3. Another group, spearheaded by Chris Elliott of the World Wildlife Fund (WWF), were intent on rectifying a perceived fault in FSC-Canada's process.

[32] With consensus defined at the "consent" of each of the three chambers.

[33] FSC-IC, "FSC General Assembly 2002—Final Motions." Bonn, Germany: FSC-IC, 2002. http://www.fsc.org/en/about/documents/Docs_cent/32, accessed February 2006.

of an organization from abuse of executive power. Interestingly, just such a charter of accountability has been developed by civil society organisations recently. Entitled the International Non-Governmental Organisations Accountability Charter, it sets out a range of expectations that the public can have about the operation of its signatories, which include Amnesty International, Transparency International, Greenpeace International and Oxfam International. The Charter promotes the values of transparency and accountability and commits signatories to a broad range of actions including the production of detailed annual reports, audited accounts, accuracy in information, ethical fundraising and safeguards for whistleblowers. While FSC is not currently a signatory to this charter, there is nothing to prevent it from signing. And it would seem to provide an excellent means of increasing the rights of its members to expect the highest levels of integrity, accountability and transparency from an organization that already has many other democratic forms.

Conclusion

As the above account makes clear, FSC's governance arrangements are sophisticated and parallel those made by governments. FSC has constituted itself as a democratic organization with a governance system replete with checks and balances at local, national and international levels, enabling the organisation to put forward a good claim to represent the global forestry polity. Diverse values and interests are grouped into a small number of formal constituencies and mediated by a balanced, representative, elected Board of Directors, which is accountable to members for its actions every three years at a General Assembly. These democratic structures are further strengthened by consensus-based decision-making, which operates at all levels of the organization. Unlike Roberts Rules of Order, consensus checks the authoritarian and majoritarian tendencies of modern electoral politics, where political parties seize power through the ballot box, promoting the values of specific sectors—small business, big business or labour—as the general interest of all. In a globalising world, moreover, FSC has one major advantage over existing governmental arrangements—it formally includes interests regardless of their geographical location. This is in contrast to states, which by their very nature partition the world in two, giving voting rights only to those deemed citizens and excluding all others.

The FSC is, moreover, *sui generis* in organisational structure. There is simply no other global organization of a similar nature. It does not easily fit the variety of non-state actor typologies that have been developed and cannot be considered merely an exemplar of "private regimes" (Porter, Haufler and Cutler 1999), "private governance" (Pattberg forthcoming), or "non-state, market-driven" governance (Cashore, Auld and Newsom 2004). While it bears some similarities with other organisations that fit such descriptions, the richness of FSC's institutional arrangements suggest that it is something more: an instance of global democratic corporatism. While space does not permit a full expose of GDC, there are three important features of this mode of governance. First, the integration of interests across the North-South divide means that standards are developed that meet the test of developmental equality. Second, the channelling of interests into chambers—social, environmental and economic—means that networks of interests are created resulting in network politics—intra-network negotiations followed by inter-network negotiations. Finally, the emphasis on consensus-based decision making and on interest balance between economic, social and environmental groups means that

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solutions are found that meet the needs of all—economic interests have a say but cannot override the interests of other groups.

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