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Treaty Congestion in International Environmental Law: The Need for Greater International Coordination

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COMMENTS

TREATY CONGESTION IN INTERNATIONAL ENVIRONMENTAL LAW: THE NEED FOR GREATER INTERNATIONAL COORDINATION

I. INTRODUCTION

The number of multilateral environmental agreements in the international community has proliferated greatly since the 1972 United Nations Conference on the Human Environment held in Stockholm, Sweden.[1] When the conference was held in 1972, there were approximately three dozen multilateral environmental agreements in existence.[2] In 1989, the United Nations' Environmental Programme (UNEP) Register of Environmental Agreements listed a total of 139 treaties.[3] Today, there are more than 900 international legal instruments, including treaties and binding or non-binding agreements that "are either focused on [the] environment or contain one or more important provisions concerned with the environment."[4] This growth and

1. *See* EDITH BROWN WEISS ET AL., INTERNATIONAL ENVIRONMENTAL LAW: BASIC INSTRUMENTS AND REFERENCES ix (1992) [hereinafter BROWN WEISS, INTERNATIONAL ENVIRONMENTAL LAW]; Edith Brown Weiss, *Strengthening National Compliance with International Environmental Agreements*, 27 ENVTL. POL'Y & L. 297, 297 (1997) [hereinafter Brown Weiss, *Strengthening National Compliance*].

2. *See* Brown Weiss, *Strengthening National Compliance*, *supra* note 1, at 297.

3. *See* PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 105 (1995). The growth in the number of treaties registered on the UNEP register has almost doubled in each decade since the 1950s. There were 6 treaties registered by 1950, 18 registered during the 1950s, 26 registered in the 1960s, 47 registered in the 1970s, and 41 registered in the 1980s. *See id.*

4. Brown Weiss, *Strengthening National Compliance*, *supra* note 1, at 297.

success in negotiating multilateral environmental agreements is likely to continue in the future.

Not surprisingly, the rapid, almost exponential, development of international environmental law in the last two and a half decades has created some problems. One of these problems is addressed in the concept of "treaty congestion."[5] The definition of treaty congestion used in this article encompasses not only the concept of actual substantive treaty conflict envisioned under the Vienna Convention of Treaties, but also broader notions of treaty obligation and objective conflicts as well as procedural conflicts of time, compliance energy, and compliance requirements. Treaty congestion is a significant problem in international law because it contributes to inefficiency and non-compliance among existing multilateral environmental agreements.

The concept of treaty congestion may be divided into two main categories: substantive treaty congestion and procedural treaty congestion. Substantive treaty congestion includes those situations where provisions in existing treaties actually conflict,[6] obligations among treaties are inconsistent, gaps exist in coverage, and goals and responsibilities are duplicated.[7] Procedural treaty congestion refers to those problems that occur, especially in developing countries, due to a lack of time and trained human resources to effectively handle all of the duties arising under each international agreement that the state has ratified.[8] For example, assume that State Y is a signatory to

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5. *See, e.g.*, Gunter Handl, *Compliance Control Mechanisms and International Environmental Obligations*, 5 TUL. J. INT'L & COMP. L. 29, 29-30 (1997) (describing "treaty congestion" as a buzz word in international environmental legal discussions). Currently, no precise definition of "treaty congestion" has been put forth in any scholarly journal. Nevertheless, Edith Brown Weiss discusses several "side effects" of this phenomenon in her article, Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 81 GEO. L.J. 675, 697-702 (1995). These side effects include the following: (1) operational inefficiency such as lack of coordination in the system of international agreements; (2) inconsistencies in treaty obligations; (3) gaps in coverage between treaties; (4) duplication of treaty goals and responsibilities; (5) inefficiencies in implementation; and (6) overload at the national level in implementing international agreements. *See id.*

6. *See infra* Part II and accompanying notes.

7. *See* Brown Weiss, *supra* note 5, at 699-700.

8. *See* SANDS, *supra* note 3, at 141 (noting that "it is evident that states are taking on international environmental commitments which are increasingly stringent and which must be complied with").

one hundred international environmental treaties, and that State Y must file yearly reports under fifty of the treaties, send delegates at least every three years to the protocols and conventions under all of the respective treaties, and implement and enforce all of the treaties. All of these duties create an overwhelming task. This is a common example of procedural treaty congestion.

Although procedural treaty congestion and substantive treaty congestion are intertwined in many ways, this article focuses primarily on the issue of substantive treaty congestion. Current efforts of addressing treaty congestion are not sufficient to solve the problem. Part II of this article describes the concept of treaty congestion in greater detail introducing a recent example of treaty congestion between the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[9] and the International Tropical Timber Agreement (ITTA)[10] involving the listing of mahogany as an Appendix III under CITES.

Part III discusses and analyzes current and previously suggested solutions to the problem of treaty congestion. This section specifically addresses efforts to resolve treaty congestion under the Vienna Convention on Treaties by the creation of a supranational body, common housing of secretariats, and frequent meetings of secretariats. None of these currently proposed or presently used solutions properly and effectively address the concept of treaty congestion. Thus, Part IV includes two additional proposals for solutions to the problem of treaty congestion. The first, increased use of the Internet, may be used in conjunction with any of the methods already in use or currently proposed to increase effectiveness. The second solution, the creation of a NEPA-like[11] approach to treaty drafting and revision, would be a more effective method of solving the

9. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

10. International Tropical Timber Agreement, *date of adoption* Nov. 18, 1983, U.N. Doc. TD/TIMBER/11/Rev.1 (1984), *available at International Tropical Timber Agreement* (visited Dec. 21, 1998) <http://sedac.ciesin.org/pidb/texts/tropical.timber.1983.html> [hereinafter 1983 ITTA]; International Tropical Timber Agreement, Jan. 26, 1994, 33 I.L.M. 1014 [hereinafter 1994 ITTA].

11. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (1994).

treaty congestion problems which have occurred and continue to occur as a result of the massive proliferation of international environmental agreements in today's global society.

II. THE CONFLICT BETWEEN CITES AND ITTA

A. *The Issue of Treaty Congestion*

Although the concept of treaty congestion has been discussed in both the academic and professional realms of international law, no scholar or practitioner has yet put forth a precise definition of the term. "Treaty congestion" is a term of art used to describe the problems of actual substantive treaty conflict, treaty obligation and objective conflicts, and procedural conflicts which arise as a result of the proliferation of international treaties in the past three decades. The concept of treaty congestion may be further broken down into two categories: substantive treaty congestion and procedural treaty congestion.

Substantive treaty congestion, as noted above, includes those situations where provisions in existing treaties actually conflict, obligations among treaties are inconsistent, or goals and responsibilities of treaties conflict. This problem of treaty conflict, attributed to the increasingly expanding number of international treaties, was recognized as early as the 1980s when the United Nations reviewed the process of multilateral treaty making.[12] "As the body of international law created by multilateral treaties increases, greater and greater problems arise about possible conflict between treaties already in force, whether in a worldwide or regional or otherwise restricted basis, and new proposed instruments."[13] The conflicts under substantive treaty congestion may arise in the form of a precise conflict in language. Other conflicts may be those of obligations, such as are discussed in the example involving the CITES and the ITTA in Part II.B.3. below.

An example of substantive treaty congestion that has been widely debated in scholarly circle centers around the consisten-

12. *See* UNITED NATIONS, REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS 32, U.N. Doc. ST/LEG/SER.B/21, U.N. Sales No. E/F.83.V.8 (1985).

13. *Id.*

cy problems that arise between using trade sanctions to enforce environmental multilateral agreements and the most favored nation principle of the General Agreement on Tariffs and Trade (GATT).[14] General issues of treaty congestion, in the form of obligation conflict, exist in that both the GATT and an international environmental treaty may address the issue of trade measures "necessary to protect human, animal or plant life or health."[15] Specific issues of treaty conflict, also embodied in the concept of treaty congestion, may only arise when involved parties are both members to a multilateral environmental agreement under which trade sanctions are created, and involved parties are both members of the GATT.[16]

Procedural treaty congestion, on the other hand, focuses on the problems that arise, especially in developing countries, due to a lack of time and resources to handle effectively all of the procedural duties that arise under each international agreement to which the state is a party. Reporting congestion is a prominent example of procedural treaty congestion. Most international environmental agreements expressly require parties to report on either an annual or biannual basis.[17] The sheer number of reports required often limits the ability of countries, especially developing countries, to meet reporting requirements. For exam-

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14. *See generally* Robert A. Brand, *Sustaining the Development of International Trade and Environmental Law*, 21 VT. L. REV. 823 (1997); *see also* Brown Weiss, *Strengthening National Compliance*, *supra* note 1, at 298-99; Christine Crawford, *Conflicts Between the Convention on International Trade in Endangered Species and the GATT in Light of Actions to Halt the Rhinoceros and Tiger Trade*, 7 GEO. INT'L ENVTL. L. REV. 555 (1995) (discussing a conflict between the GATT and the CITES).

Article I of the GATT, which sets out the "most favored nation" principle, provides that a contracting party to the GATT may not discriminate against trade with one contracting party in favor of another contracting party. All contracting parties must be treated alike in the application of tariffs and commercial policies. *See* Brand, *supra*, at 828.

15. Brand, *supra* note 14, at 836. This general obligational/objective conflict arises despite the fact that the signatories to the conflicting international treaty might be asimilar.

16. *See id.* at 862-64. Brand states that the most significant examples of substantive treaty conflict occur when both countries are members of both the multilateral environmental treaty and the GATT. In those instances, Brand states, the laws of treaty construction must be used to resolve the relationship between the two treaties' rules. *See id.*

17. *See* SANDS, *supra* note 3, at 147.

ple, under CITES, only twenty-five of the 104 parties submitted reports summarizing their 1989 import/export certificates.[18]

The problems of procedural and substantive treaty congestion will increase as the number of multilateral international environmental treaties continues to expand. The next section explores a recent treaty congestion problem which arose between the CITES and the ITTA over the use and trade of mahogany. In short, an obligational conflict arises between the two treaties. On one hand, any listing of mahogany with the CITES as an endangered species would dictate potentially severe restrictions on the trade of mahogany in countries which produce this species of flora. On the other hand, ITTA advocates the sustainable use and trade of this species and frowns upon any ban on mahogany trade.

B. *The CITES v. the ITTA*

1. The Structure of the CITES

The CITES was designed in 1973 to address the problem of illegal trade in endangered species. Today, more than 144 countries are parties to the CITES.[19] The CITES' stated purpose is to "ensure through international co-operation, that the international trade in specimens of species of wild fauna and flora does not threaten the conservation status of the species concerned."[20]

The degree of protection offered under the CITES is divided into three categories depending in which of the three appendices the species is listed.[21] Appendix I includes "all species threatened with extinction which are or may be affected by trade."[22] In general, Appendix I species are offered the most

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18. *See id.* at 148.

19. *See* EDITH BROWN WEISS, INTERNATIONAL ENVIRONMENTAL LAW & POLICY 981 (1998); THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS: A SURVEY OF EXISTING LEGAL INSTRUMENTS 116-20 (Peter H. Sand ed., 1992) [hereinafter UNCED SURVEY] (listing 112 parties to the Convention as of January 1992).

20. UNCED SURVEY, *supra* note 19, at 79.

21. *See* CITES, *supra* note 9, art. II, 27 U.S.T. at 1092, 993 U.N.T.S. at 245-46, 12 I.L.M. at 1088.

22. *Id.* art. II, ¶ 1, 27 U.S.T. at 1092, 993 U.N.T.S. at 245, 12 I.L.M. at 1088.

protection, and trade in these species is either banned or very heavily regulated.[23] Appendix II includes "all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival."[24] Trade in these species is less regulated than Appendix I species; however, imports and exports of Appendix II species are still regulated by a permit system.[25] A species is listed to either Appendix I and Appendix II upon a two-thirds majority vote of the parties present and voting.[26] The CITES covers more than 600 species on the Appendix I endangered list and more than 2300 species of animals and 24,000 plants on the Appendix II list of threatened species.[27]

In addition to the protections offered under Appendices I and II, an individual state may list a species to Appendix III if the party identifies that species "as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade."[28] Appendix III listings are species that usually are endangered within the listing state but not necessarily considered endangered in the international community.[29] Trade in Appendix III species is allowed upon a showing of an export permit from the listing state indicating that the species was *"not obtained in contravention of the laws of*

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23. *See id.* art. III, 27 U.S.T. at 1093, 993 U.N.T.S. at 246-47, 12 I.L.M. at 1089. Both the export and import of an Appendix I species require the presentation of both an export and import permit. Permits are only issued when the scientific authority of the country determines that the import/export will not be detrimental to the species, that the species was obtained legally, that any living specimen will be transported properly, that the recipient will suitably house and care for the specimen and, in the case of an export permit, that an import permit has been granted. *See id.*

24. *Id.* art. II, ¶ 2, 27 U.S.T. at 1092, 993 U.N.T.S. at 245, 12 I.L.M. at 1088-89.

25. *See id.* art. IV, 27 U.S.T. at 1092, 993 U.N.T.S. at 247, 12 I.L.M. at 1088-89. A person transporting an Appendix II species need only obtain an export permit, which must be presented both upon export and import. *See id.*

26. *See id.* art. XV, ¶ 1(b), 2(j), 27 U.S.T. at 1093, 993 U.N.T.S. at 254, 12 I.L.M. at 1093.

27. *See* BROWN WEISS, *supra* note 19, at 1944.

28. CITES, *supra* note 9, art. II, ¶ 3, 27 U.S.T. at 1092, 993 U.N.T.S. at 246, 12 I.L.M. at 1089.

29. *See* Crawford, *supra* note 14, at 558.

that State for the protection of fauna and flora"[30] and that the specimen will be transported properly.[31]

2. The Structure of the ITTA

a. The 1983 International Tropical Timber Agreement[32]

The objectives of the 1983 ITTA are to "promote the management of tropical forests on a *sustainable basis* and to provide a framework for co-operation between producing and consuming member states in the tropical timber industry."[33] Tropical timber is defined within the treaty as "non-coniferous tropical wood for industrial uses, which grows or is produced in the countries situated between the Tropic of Cancer and the Tropic of Capricorn."[34] Under this agreement, members aim to balance the "sustainable utilization"[35] of tropical timber with the "expansion and diversification of international trade in tropical timber."[36] Members of this agreement, which also compose the International Tropical Timber Organization (ITTO) created by

30. CITES, *supra* note 9, art. V, ¶ 2(a), 27 U.S.T. at 1097, 993 U.N.T.S. at 248, 12 I.L.M. at 1090 (emphasis added).

31. *See id.* art. V, ¶ 2(b), 27 U.S.T. at 1097, 993 U.N.T.S. at 248, 12 I.L.M. at 1090.

32. *See* 1983 ITTA, *supra* note 10.

33. UNCED SURVEY, *supra* note 19, at 105 (emphasis added). Multiple definitions of the term "sustainable development" currently exist in the international community. *See generally* United Nations Conference on Environment and Development: Convention on Biological Diversity, June 5, 1992, art. 2, 31 I.L.M. 818, 824 (defining sustainable use as "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations"); Ben Boer, *Institutionalising Ecologically Sustainable Development: The Roles of National, State and Local Governments in Translating Grand Strategy into Action*, 31 WILLAMETTE L. REV. 307, 317-19 (1995). The concept of sustainable development involves the "concepts of intragenerational and intergenerational equity, application of the precautionary principle, the conservation of biological diversity and integrity, and the internalisation of environmental costs." *See id.* at 318-19. OUR COMMON FUTURE, a publication of the World Commission on Environment and Development, defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." *Id.* at 317 (quoting WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 87 (Australian ed. 1990)).

34. 1983 ITTA, *supra* note 10, art. 2(1), at 9.

35. *Id.* art. 12(h), at 8.

36. *Id.* art. 1(b), at 8.

the 1983 ITTA, are divided into two categories: producing members and consuming members.[37] These members have three major duties: "to pay contributions to the Administrative Account, and (in the case of developed consumer member nations particularly) to the special account for projects; to provide data on tropical timber requested by the Council; and to use their best endeavors to co-operate to promote the attainment of the [1983] ITTA objectives."[38]

b. The 1994 International Tropical Timber Agreement[39]

The objectives of the 1983 ITTA are further strengthened and refined in the 1994 ITTA. Stated objectives of the 1994 ITTA include the following: "to contribute to the process of sustainable development;"[40] "to enhance the capacity of members to implement a strategy for achieving exports of tropical timber and timber products from sustainably managed sources by the year 2000;"[41] "to promote increased and further processing of tropical timber from sustainable sources in producing member countries with a view to promoting their industrialization and thereby increasing their employment opportunities and export earnings;"[42] and "to improve marketing and distribution of tropical timber exports from sustainably managed sources."[43] Again, the objectives of the 1994 ITTA reflect the desire to balance trade in tropical timber with sustainable forest management of tropical timber.

Under the 1994 ITTA, the ITTO, which consists of both producing[44] and consuming members,[45] remains in existence,

37. *See id.* art. 4, at 9. Annex A to the 1983 ITTA lists the producing members, including Bolivia, Brazil, Costa Rica, and Mexico. *See id.* Annex A. Annex B lists the consuming members. *See id.* Annex B. Producing members are, for the most part, developing countries and include almost all of the tropical timber producing countries in the world. *See* UNCED SURVEY, *supra* note 19, at 107.

38. UNCED Survey, *supra* note 19, at 107.

39. 1994 ITTA, *supra* note 10.

40. *Id.* art. 1(c), 33 I.L.M. at 1017.

41. *Id.* art. 1(d), 33 I.L.M. at 1017.

42. *Id.* art. 1(i), 33 I.L.M. at 1018.

43. *Id.* art. 1(k), 33 I.L.M. at 1018.

44. *See id.* Annex A, 33 I.L.M. at 1042 (including Bolivia, Brazil, Costa Rica, and Mexico).

45. *See id.* Annex B, 33 I.L.M. at 1042.

with the International Tropical Timber Council (Council) being the highest authority of the ITTO.[46] The 1994 ITTA also establishes the Bali Partnership Fund which serves to "assist producing members to make the investments necessary to achieve the objective of Article 1(d) of this Agreement."[47] To achieve the Article 1 objectives, the ITTO is required to "undertake policy work and project activities in the areas of Economic Information and Market Intelligence, Reforestation and Forest Management and Forest Industry."[48] Finally, the Council must produce an annual report on the international timber situation and "[o]ther factors, issues and developments considered relevant to achieve the objectives of this Agreement."[49] Any complaints that members are not fulfilling their obligations under the 1994 ITTA Agreement are reported to the Council for decision.[50] The Council's decisions are binding on the members.[51]

3. The Conflict Between the CITES and the ITTA

a. The Debate over Mahogany

One of the continued debates in the field of environmental conservation is the preservation of rainforests.[52] The harvesting of Latin American Mahogany is one of the major contributing sources to the destruction of rainforests.[53] An estimated 1450 square meters of forest is destroyed for every one mahogany tree extracted.[54] Furthermore, bigleaf mahogany (*Swietenia*

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46. *See id.* arts. 3, 6, 33 I.L.M. at 1019-20.

47. *Id.* art. 21(1), 33 I.L.M. at 1028. The objective is to have sustainable managed forests by the year 2000. *See id.*

48. *Id.* art. 24, 33 I.L.M. at 1030. The ITTO created the following committees to aid in reaching its objectives: the Committee on Economic Information and Market Intelligence; the Committee on Reforestation and Forest Management; the Committee on Forest Industry; and the Committee on Finance and Administration. *See id.* arts. 26, 27, 33 I.L.M. 1031-34.

49. *Id.* art. 30(2), 33 I.L.M. at 1035.

50. *Id.* art. 31, 33 I.L.M. at 1035-36.

51. *See id.*

52. *See generally Rainforest Alliance* (visited Dec. 1, 1998) <http://www.rainforest-alliance.org/>; *Rainforest Action Network* (visited Dec. 1, 1998) <http://www.ran.org/>.

53. *See* Rainforest Action Network, *Brazil Bans Mahogany Logging in the Amazon* (visited Dec. 1, 1998) <http://www.ran.org/ran/info_center/press_release/mahog.html>. The majority of mahogany that is sold today is illegally logged from the rainforests of Brazil and Bolivia.

54. *See The Case Against Mahogany* (visited Apr. 2, 1999) <http://www.chsu.

macrophylla) found in thirteen Latin American countries, including Brazil, Mexico, and Bolivia, is in danger of extinction.[55] Despite this fact, bigleaf mahogany continues to be logged at an unsustainable rate—an annual total volume of 500,000 cubic meters (about 137,773 trees).[56] This is partially because importers, particularly the United States, pay high prices in international markets for mahogany.[57] As a result, there has been an increase in campaigns to have trade in bigleaf mahogany banned or severely restricted.[58]

The debate over limiting trade in bigleaf mahogany again came to a head at the Tenth Conference of the Parties of CITES, held in Harare, Zimbabwe from June 9, 1997 through June 20, 1997.[59] At this conference, the United States and Bolivia proposed to list bigleaf mahogany on Appendix II.[60] The proposal, however, was turned down, receiving only sixty-seven out of 121 votes, which is seven votes short of approval.[61] As an Appendix II listed species, persons wishing to export mahog-

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cam.ac.uk/green/ef/case.html>.

55. *See* Sarah Tyack, *Mahogany Misses CITES Appendix II Again* (visited Dec. 1, 1998) <http://www.enviroweb.org/rainrelief/newsnotes/tyack1.htm>.

56. *See Mahogany is Murder Fact Sheet* (visited Apr. 1, 1998) <http://www.ran.org/>.

57. *See* Rainforest Action Network, *supra* note 53 (stating that the United States is the world's single largest importer of mahogany).

58. In early 1997, more than 137 leading United States environmental groups requested that the United States seek an active role in acquiring CITES protection for mahogany. Environmental groups that participated in this effort include the following: Audubon Society; Defenders of Wildlife; Environmental Defense Fund; Environmental Investigation Agency; Friends of the Earth USA; Greenpeace; Natural Resources Defense Council; Rainforest Action Network; Rainforest Relief; Sierra Club Legal Defense Fund; and Western Ancient Forests Campaign. *See* Rainforest Action Network, *U.S. Fish and Wildlife Proposes Sweeping Protection for Threatened Amazon Mahogany* (visited Dec. 1, 1998) <http://www.ran.org/ran/info_center/press_release/e_mahog.html>. See discussion *infra* Part II.B.3.b.

59. *See The Results of Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES] Before the Subcomm. on Fisheries Conservation, Wildlife and Oceans of the House Comm. on Resources*, 105th Cong. (1997) (unpublished) (*available in* 1997 WL 400298, at *1) (statement of Donald Barry, Acting Assistant Secretary of Fish and Wildlife and Parks, Department of the Interior). *See also* Tyack, *supra* note 55.

60. *See Brazil Cuppers Tougher Mahogany "Listing,"* TIMBER TRADE J., June 28, 1997, at 4; Tyack, *supra* note 55; *see also* Rainforest Action Network, *supra* note 53 (stating that Bolivia is the leading mahogany exporting country).

61. *See Brazil Cuppers Tougher Mahogany "Listing," supra* note 60, at 4; Tyack, *supra* note 55 (noting that this is the third time that a proposal to list bigleaf mahogany on Appendix II of CITES has failed).

any would be required to show that their mahogany export permits were legally obtained.[62]

In a compromise, Brazil, Bolivia, and Mexico, some of the largest exporters of mahogany, pledged to join Costa Rica in listing bigleaf mahogany on Appendix III.[63] As an Appendix III listed species, bigleaf mahogany would be considered "endangered" within these countries. Also, the export of the mahogany would be monitored intensely through the permit system and potentially restricted according to the laws of the individual country.[64] In addition to the Appendix III listing, Brazil agreed to convene a working group of states to draft conservation recommendations within eighteen months.[65]

b. The Conflict

The potential listing of bigleaf mahogany as an Appendix III species by Brazil, Bolivia, or Mexico, and the fact that it is already listed as such by Costa Rica raises questions of potential conflict between the CITES and the ITTA. Currently, Brazil and Bolivia are members to both the ITTA and the CITES.[66]

How does this conflict exist? Under the ITTA, Brazil and Bolivia have pledged to manage their forests sustainably by the year 2000.[67] Although this means that some conservation ef-

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62. *See* CITES, *supra* note 9, art. IV, ¶ 2, 27 U.S.T. at 1095, 993 U.N.T.S. at 264 12 I.L.M. at 1089. An export permit is granted for an Appendix II species upon a showing that "a scientific Authority of the State of the export has advised that such export will not be detrimental to the survival of that species" and "a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora." *Id.*

63. *See Oversight Hearings on CITES Meetings Before the Subcomm. on Fisheries Conservation, Wildlife, and Oceans of the House Comm. on Resources*, 105th Cong. 29 (1997) (testimony of Donald Barry, Deputy Assistant Sec. for Fish and Wildlife and Parks, Dept. of the Interior).

64. Currently 5.4 million acres of rainforest are destroyed in Brazil each year. *See* Rainforest Action Network, *Rates of Rainforest Loss* (visited Dec. 1, 1998) <http:www.ran.org/ran/info_center/rates.html>.

65. *See Worldview CITES: Meeting Ends with Compromise on Mahogany*, AM. POLI. NETWORK, June 23, 1997, at 19; *see also* Tyack, *supra* note 55 (stating that the working group will include representatives from major importers such as the United States and United Kingdom as well as countries in which the species is found).

66. *See* UNCED SURVEY, *supra* note 19, at 116-18.

67. *See* 1994 ITTA, *supra* note 10, Preamble, 33 I.L.M. at 1016-17.

> [A] statement of commitment to maintain or achieve by the year 2000,

forts will be undertaken to maintain each country's source of mahogany, there will still be trade because the objectives of the ITTA include efforts to promote trade and increase processing of tropical timber.[68] The CITES, on the other hand, has quite an opposite objective—to restrict trade in endangered or threatened species.[69] Because an Appendix III listing requires an export permit, which can only be granted when the specimen was not obtained in contravention of state laws, the contrast between the ITTA and the CITES becomes even more defined depending on the individual country's domestic laws.[70] For example, the Brazilian National Congress has placed a moratorium on new mahogany logging through at least 1998.[71] Now, backed up by a CITES Appendix III listing, the provision receives added backbone—no export permits should be issued on any new mahogany that is logged in Brazil. When listed under Appendix III, a violation would not only be a violation of state law under which the individual would be responsible, but also a violation of the CITES treaty for which Brazil would be responsible. This complete ban is in direct conflict with Brazil's other obligation to ensure that trade in mahogany is only sustainably managed under the ITTA. This conflict of obligations between the two treaties currently is recognized by both

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> the sustainable management of their respective forests [was] made by consuming members who are parties to the International Tropical Timber Agreement, 1983 at the fourth session of the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1983 in Geneva on 21 January 1994.

Id. at 1016.

68. *See id.* art. 1, 33 I.L.M. at 1017.

69. *See* Letter from Department of State to Richard M. Nixon, President of the United States of America (Apr. 5, 1973), *reprinted in* 12 I.L.M. 1085.

70. *See* CITES, *supra* note 9, art. V, ¶ 2(a), 27 U.S.T. at 1097, 933 U.N.T.S. at 248, 12 I.L.M. at 1090.

71. *See* Rainforest Action Network, *Brazil Bans Mahogany Logging in the Amazon: Will U.S.A. Ban Mahogany Imports* (visited Dec. 29, 1998) <http://www.ran.org/ran/info_center/press_release/mahog.html> (press release dated July 29, 1996); *see also* Rainforest Action Network, *Brazilian State of Amazonas Suspends New Logging Projects* (visited Dec. 29, 1998) <http://www.ran.org/ran/info_center/press_release/am_logging.html> (press release dated Feb. 3, 1998, stating that the government of the Brazilian state of Amazonas has put a hold on million dollar investment projects put forward by Chinese and Malaysian companies).

the Council of the ITTA and the CITES.[72] Efforts have begun to resolve this treaty congestion.

c. The CITES Timber Working Group

The CITES has established a Timber Working Group (TWG) in response to the ongoing conflict between the CITES and the ITTA.[73] The working group originally was approved at the Ninth Conference of the Parties, held in November 1994.[74] The original decision states:

> Regarding implementation of the Convention for timber species
>
> 4. A temporary working group shall be established, chaired by the Chairman of the Plants Committee, who would:
>
> a) in consultation with the Standing Committee: a) establish limited terms of reference for the working group, which address the technical and practical problems associated with the implementation of tree listings; b) *define the relationship of the group with existing international organizations, which are at present addressing the problem of sustainable use of timber resources*; and c) consider other associated matters referred to the group by the Plants Committee, the Standing Committee, or the Secretariat;
>
> b) ensure that relevant expertise is the key issue when deciding upon participation in the working group;
>
> c) ensure range States are present to contribute their expertise;
>
> d) ensure that temperate, boreal and tropical forest product issues are likewise addressed; and

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72. *See Recent Forest Policy Meetings: Other Forest Meetings—International Tropical Timber Organization (ITTO)* (visited Dec. 29, 1998) <http://www.iisd.ca/linkages/forestry/recent.html#otherforests> (discussing the events of the 20th Session of the International Tropical Timber Council held in Manila, Philippines, from May 15-23, 1996). At this meeting, producer member countries expressed concern about the inclusion of mahogany in Appendix III of the CITES and the debate on the relationship between the ITTO and the CITES. *See id.; see also ITTO Council Reaches Temporary Pact on Certification, Endangered Species*, 17 Int'l Env't. Rep. (BNA) (June 1, 1994) 460 (stating that the ITTO's "members should coordinate actions between the ITTO and the CITES to avoid incompatible points of view") (internal quotes omitted).

73. *See CITES Decisions 9th Meeting of the Conference of the Parties* (visited Dec. 29, 1998) <http://www.wcmc.org.uk/CITES/english/edecis9.htm#17>.

74. *See id.*

> e) report back to the tenth meeting of the Conference of the Parties.[75]

The ITTO has requested "effective participation of ITTO in all meetings of the TWG in order to emphasize the importance of commercial tropical timber species to the economies of tropical timber producing countries and the need to avoid obstacles to international trade in tropical timber."[76] Other members of the TWG include representatives from Cameroon, the Republic of Korea, Malaysia, the European Union, the United Kingdom, Switzerland, Costa Rica, Canada, the United States, Brazil, Ghana, Japan, the World Conservation Union, the Traffic Network, and the International Wood Products Association.[77] The TWG was reap-proved at the Tenth Conference of the Parties and will be maintained with its current balance of membership and approximate size until the Eleventh Conference of the Parties.[78]

Although the TWG eventually may solve the conflict between the CITES and the ITTO, for the reasons discussed below, this "working group" method is too piecemeal to apply on a wider scale in every international treaty congestion case. What occurs in one treaty working group most likely will have no precedential value for the next working group, especially if it focuses on a different environmental or international topic. As a result, the "wheel" will need to be "recreated" each time a potential conflict or congestion problem arises and a working group convenes.

III. How Should the International Community Alleviate the Problem of Treaty Congestion?

As the previous example of conflict between the ITTA and the CITES illustrates, treaty congestion is a reality in the field

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75. *Id.* (emphasis added).

76. *Recent Forest Policy Meetings: Other Forest Meetings—International Tropical Timber Organization (ITTO)*, *supra* note 72.

77. *See* Christopher Cantwell, *CITES Works on Wood* (visited Dec. 29, 1998) <http://www.goodwood.org/goodwood/goodwood_list/CITES/cites1.body.html>.

78. *See CITES Decisions* (visited Dec. 29, 1998) <http://www.wcmc.org.uk/CITES/english/edecis10.htm#67>.

of international environmental law. Efforts continually are being made to address existing conflicts among international environmental treaties and to prevent additional conflicts from arising in the future. Agenda 21, finalized at the United Nations Conference on Environment and Development in Rio de Janeiro, lists one of its objectives as the ability "to identify and prevent actual or potential conflicts, particularly between environmental and social/economic agreements or instruments, with a view to ensuring that such agreements or instruments are consistent. Where conflicts arise, they should be appropriately resolved . . . ."[79] What Agenda 21 does not provide, however, is a method to resolve the conflict. Nevertheless, because the problem of treaty congestion was brought to the attention of international law makers, several suggestions have been made as to how to better coordinate the existing and future international environmental treaties.[80]

Part A of this section addresses four methods of reconciling treaty congestion. These four methods have been discussed in scholarly circles and, in some cases, have been used in an attempt to solve the problem of treaty congestion. For the reasons discussed below, however, as well as the continued existence of this problem, these proposals have not eradicated treaty congestion. Part B of this section proposes two new alternative methods.[81]

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79. UNCED SURVEY, *supra* note 19, at 21.

80. *See* Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT'L L. 259, 261 (1992) (noting that an attempt to coordinate environmental protection was made in the System-Wide Medium Term Environment Programme, under which one document would include all environmental activities, frameworks and strategies); SANDS, *supra* note 3, at 103 (noting that the international law-making function is decentralized and fragmented); *see also* THE EDITORS OF THE HARVARD LAW REVIEW, TRENDS IN INTERNATIONAL ENVIRONMENTAL LAW 114 (1992) [hereinafter TRENDS] (stating that the international community has wanted to coordinate international environmental agreements of the myriad intergovernmental organizations (IGOS) for a long time).

81. When possible, the author reflects back to the CITES and the ITTA conflict. *See* discussion *supra* Part II. Further, this article suggests how each proposal might affect the conflict between the CITES and the ITTA.

A. *Current Efforts to Alleviate the Problem of Treaty Congestion*

1. The Vienna Convention on the Law of Treaties[82]

Article 30 of the Vienna Convention on the Law of Treaties suggests one solution to resolve issues of treaty conflict regarding the "[a]pplication of successive treaties relating to the same subject matter."[83] Article 30 states, in part, as follows:

> 1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
> 2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
> 3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
> 4. When the parties to the later treaty do not include all the parties to the earlier one:
>
> (a) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;
>
> (b) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.[84]

These rules of interpretation suggest that the following three characteristics are important in determining the solution to a treaty conflict: the membership of conflicting treaties in relation to each other, time, and special treaty clauses.[85] In addition,

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82. Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, Mar. 21, 1986, 25 I.L.M. 543 [hereinafter Vienna Convention].

83. *Id.* at 561.

84. *Id.* at 561-62.

85. *See* Wolfram Karl, *Treaties, Conflicts Between, in* 7 ENCYCLOPEDIA OF PUB. INT'L LAW 467, 468 (1984). An example of a special treaty clause may be found in Article 11 of the Basel Convention:

> [P]arties may enter into bilateral, multilateral, or regional agreements or

Article 30 suggests a simple method of dealing with treaty conflict. As one scholar stated, however, "[i]ndeed, it is their very simplicity which may occasion some concern, given the varying types of situations which they are designed to cover."[86] This same simplicity also will cause Article 30 to fail in addressing the issue of treaty congestion.[87]

Article 30 does not address all situations of treaty congestion. The Article 30 requirement of "'relating to the same subject matter' must be construed strictly. As a result, the Vienna Convention does not cover instances where a general treaty impinges indirectly on the content of a particular provision of an earlier treaty."[88] Moreover, Article 30 does not cover general conflicts of obligation.[89] Instead, these examples of treaty congestion are harmonized away using various methods of interpretation, and therefore, they are not resolved as true "conflicts" under Article 30.[90]

In addition, many procedural aspects of treaty congestion are not addressed by the Vienna Convention. As this type of treaty congestion is merely procedural in nature, it fails the "subject matter" requirement of Article 30. For example, there is no real "subject matter" conflict when two or more treaties require separate reporting methods tracking the use of the same resource within the country. Consequently, only precise substantive conflicts that arise as a result of treaty congestion are covered under Article 30.

Article 30 also neglects to address the intent of the creating parties in determining which provision of a treaty reigns supe-

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> arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, art. 11, ¶ 1, 28 I.L.M. 657, 668 (1989).

86. SIR IAN SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 94-95 (Manchester Univ. Press 2d ed. 1984).

87. *See id.* at 98 (stating "[t]he rules laid down fail to take account of the many complications which arise when there coexist two treaties relating to the same subject-matter").

88. *Id.*

89. *See id.*

90. *See* Karl, *supra* note 85, at 470.

rior.[91] Instead, Article 30 arbitrarily applies the principle of *lex posterior*. Article 30 does not allow for a determination as to whether the parties intended for the two provisions to conflict with each other or for the later provision to prevail over the former. Furthermore, in many instances of treaty congestion, such as the conflict between the CITES and the ITTA, both treaties are already in force before a conflict in the provisions surfaces. Thus, applying the arbitrary rules of time, as Article 30 suggests, may not achieve the true or intended objectives of the parties to either multilateral environmental treaty.

2. Creation of a Supranational Body

Increased communication and coordination between international environmental treaties seems to be a logical and important first step toward alleviating the problem of treaty congestion.[92] Probably the most common proposal to increase the communication and coordination between international environmental treaties, and thus alleviate the problems of treaty congestion, is to create a supranational body.[93] In theory, this supranational body would have some attributes comparable to those of all three branches of the United States government. The supranational body that scholars and countries have envisioned would have decision making powers, law-making powers, enforcement powers, or any one of a combination of these three attributes.[94] For example, New Zealand, at the 1989 General Assembly Debate for a new United Nations Environmental Institution, proposed the development of an Environmental Protection Council.[95] This proposed body had both legislative and decision making powers.[96] In preparation for the Stockholm Conference, then United Nations Secretary General U.

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91. *See* SINCLAIR, *supra* note 86, at 98.

92. *See* SANDS, *supra* note 3, at 104 (stating that there is a need for increased coordination between international organizations, including those created by international environmental agreements).

93. *See* TRENDS, *supra* note 80, at 123 ("The lack of centralized supranational regulatory authority is often cited as the crucial barrier to effective environmental protection and management.").

94. *See* Palmer, *supra* note 80, at 279.

95. *See id.*

96. *See id.*

Thant proposed a "global authority" that would consist of "a legislative body capable of establishing binding standards . . . and an enforcement authority with power to make conclusive determinations as to compliance."[97] The Soviet Union, at one point, also advocated the establishment of a supranational body with a more limited scope of jurisdiction. Specifically, they proposed the establishment of a United Nations body similar to the existing Security Council. This United Nations body would enforce environmental obligations that affected a country's security.[98]

Theoretically, these proposed supranational bodies would be able to integrate and consolidate international environmental treaties with similar obligations and goals, thus eliminating areas of jurisdictional overlap between treaties.[99] In the alternative, or in the process of consolidation, the supranational authority also would resolve all conflicts that arise between treaties by adjudicating one treaty provision superior to another.

Despite the seemingly attractive aspirations of a supranational body to coordinate the field of international environmental law, it is unlikely that such a supranational body will ever exist or be able to accomplish these lofty goals.[100] Perhaps the largest obstacle to a supranational body is the notion of sovereignty. In general, countries are wary and unwilling to transfer too much power to an international body over which the individual countries have little or no control.[101]

For example, in response to a questionnaire prepared by the Secretary General of the United Nations for the 1980 Report of the Secretary General regarding the Multilateral Treaty-Making

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97. TRENDS, *supra* note 80, at 123 (omission in original).

98. *See id.* at 124 n.92.

99. In this regard, the supranational body would be similar to the Environmental Protection Agency (EPA) in the United States. The creation of the EPA has allowed one agency to preside over all issues of environmental law and eliminate any jurisdictional overlap between statutes.

100. *See* TRENDS, *supra* note 80, at 124.

101. *See id.* at 123-24; MICHAEL J. SANDEL, DEMOCRACY'S DISCONTENT 346 (1996) (stating that "[p]eople will not pledge allegiance to vast and distant entities, whatever their importance, unless those institutions are somehow connected to political arrangements that reflect the identity of the participants"); SANDS, *supra* note 3, at 154 ("Sovereign interests have . . . led states to be unwilling to transfer too much enforcement power to international organisations and their secretariats . . . .").

Process, most countries expressed the view that they would not support the General Assembly's assumption of the overall coordinating role in treaty-making.[102] One of the reasons for this lack of support was concern over the autonomy of other international organizations and countries.[103] Part of the rationale behind each country's concern over sovereignty lies within the international norm of the doctrine of consent[104]—a country is unwilling to be bound and cannot be bound by any provision unless it consents.[105]

Another reason for the failure of a supranational body may be the importance of maintaining the heterogeneousness of its members and the international organizations that it seeks to bind.[106] The international community represents a wealth of diversity in governing systems and people. This diversity and consequently, the creativity in which environmental problems are addressed in the world, could be stifled in complete globalization and homage to a supranational body.

Even if countries were to agree to organize a supranational body, it is still questionable whether the supranational body would be able to eliminate effectively the problem of treaty congestion and increase efficiency in international environmental law.[107] The creation of a supranational body unquestionably would lead to a bureaucratic nightmare.[108] For example, in the creation of the supranational body, countries would have to come to a consensus on many procedural, political, and environmental issues, including the following: (i) the number of members in the supranational body; (ii) how is one chosen to be a member; (iii) whether each member of the body would need to

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102. *See* UNITED NATIONS, *supra* note 12, at 68.

103. *See id.* at 69-73.

104. *See* TRENDS, *supra* note 80, at 119.

105. *See id.*

106. *See* SANDEL, *supra* note 101, at 344-47.

107. *See* UNITED NATIONS, *supra* note 12, at 69-73. In written comments regarding the proposal that the General Assembly assume an overall coordinating role in treaty-making, several countries, such as Australia, Germany, Italy, and the Council of Europe express concerns that the centralization would slow down the multilateral treaty-making process due to an overload in workload. *See id.*

108. *See* TRENDS, *supra* note 80, at 127, 129 (suggesting that smaller, more focused intergovernmental organizations that exist under our current system are able to react faster than a centralized system because fewer persons would need to be convinced of a policy change).

be knowledgeable about each international environmental treaty; (iv) whether every member of the body would hear every case; (v) how an issue would get before the supranational body; (vi) whether the supranational body would hear cases involving treaty congestion matters after they have occurred or whether the supranational body would take a proactive approach in preventing treaty congestion from happening; (vii) without precedent, whether the supranational body would determine which treaty takes precedence over another; and (viii) whether the creation of a single all-encompassing environmental document would be the responsibility of the supranational body or whether this responsiblity would be delegated. The sheer complexity of creating such a body, along with issues of sovereignty, make it a limited prospect in solving current problems of treaty congestion.

3. Common Housing of Secretariats

Another remedy that has been suggested to solve the problem of treaty congestion is to house the secretariats of related international environmental treaties together in the same building.[109] With respect to the CITES and the ITTA, the Secretariat of the CITES currently is provided by UNEP and is located in Lausanne, Switzerland,[110] while the ITTA Secretariat is located in Yokohoma, Japan.[111] Ideally, common housing would promote frequent communication between the secretariats of the international environmental treaties and their staffs. Also, common housing would advance information and resource sharing between secretariats and international organizations so that each secretariat or organization could learn from or build on what prior conventions or organizations already have achieved.[112] Furthermore, common housing would reduce

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109. *See* Brown Weiss, *supra* note 5, at 700 (noting that Agenda 21, developed by the United Nations Conference on Environment and Development (UNCED), suggests the co-location of secretariats). Currently, such common housing exists in the field of intellectual property.

110. *See* UNCED SURVEY, *supra* note 19, at 85.

111. *See id.* at 105; *see also* 1994 ITTA, *supra* note 10, arts. 17(2)-(4), 33 I.L.M. at 1025.

112. *See* Palmer, *supra* note 80, at 263-64.

overhead costs and economize the various duties of the secretariat.[113]

If the idea of common housing is to work as it is envisioned, more integration between the conventions would need to occur than just housing the conventions in the same building. During the 1990s, UNEP moved the secretariats of the CITES, the Climate Change Convention, the Biodiversity Convention, and the Decertification into one building.[114] UNEP learned, however, that proximity does not always lead to efficiency or communication.[115] The Secretariats did not communicate more frequently while in common housing than they did while in separate buildings, or even separate countries.[116] Eventually, the secretariats moved back to their original locations.[117]

Despite this one example, common housing if structured properly, may assist in alleviating the problem of treaty congestion and improving coordination among conventions. For example, moving the CITES, the ITTO, and the ITTA secretariat, and other secretariats of international organizations dealing with forestry into common housing might be more successful.[118] Currently, provisions exist under the CITES and the 1994 ITTA that require consultation among these organizations.[119] This

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113. *See id.*

114. *See* Interview with Edith Brown Weiss, Francis Cabell Brown Professor of International Law at the Georgetown University Law Center, in Richmond, Va. (Mar. 20, 1998).

115. *See id.*

116. *See id.*

117. *See id.*

118. Currently, the existing international organizations dealing with timber and forestry include the following: CITES, ITTO, African Timber Organization, Asian-Pacific Timber Trade Organization, Center for International Forestry Research, Food and Agricultural Organization of the United Nations, Forestry Department, International Boreal Forest Research Association, the International Wood Products Association; International Union for Forest Research Organization, IUCN-The World Conservation Union, Pro-tempore Secretariat of the Treaty for Amazonian Co-operation, Trade Records Analysis of Flora and Fauna in Commerce, European Hardwood Federation, World Conservation Monitoring Centre, and World Wide Fund for Nature. *See Conf. 10.13: Implementation of the Convention for Timber Species* (visited Dec. 1, 1998) <http://www.wcmc.org.uk/CITES/english/eresol1011-15.htm#10.13> [hereinafter CITES Resolution] (providing the text of Conf. 10.13, a CITES resolution).

119. *See id.* Under this requirement, any party seeking to present an amendment proposal for a timber species must consult with at least four listed organizations to verify both trade and biological data. *See id.*

sharing and feedback of information could be facilitated if all of these groups were under a common roof.[120]

Contrary to the UNEP example of the CITES, the ITTA, and the ITTO, common housing is supported by a legal necessity to share information between the commonly housed parties.[121] Therefore, if an instance of treaty congestion, such as the one discussed between CITES and ITTA or between conventions dealing with very similar environmental issues arose, the exchange of information could be facilitated by common housing and proper organization within that housing. Furthermore, when an issue of conflict between the treaties arose, the secretariats, if all in one location, would be able to meet quickly and assess the situation immediately.[122]

As a more practical matter, common housing may be an insurmountable goal. If one were to try to house all of the international organizations that deal with a particular subject in one building, the most likely result would be a large institution which lacks the closeness and sense of community intended and desired in a common housing concept.[123]

4. Frequent Meetings of Secretariats

A more conventional approach to ensure communications among secretariats would be to establish common meetings. Ideally, these meetings would allow the various secretariats to report the recent developments under the existing conventions and discuss problems that arise from treaty congestion.[124] For example, in the context of the CITES and the ITTA conflict, the secretariats of the different timber related conventions could meet annually or biannually to review various provisions re-

120. A common roof may, in some instances, be impossible. As an alternative see discussion *infra* Part III.B.1 (regarding the Internet).

121. *See generally* discussion *infra* Part II.B.3.c.

122. The cost of traveling to a common place to negotiate a solution also would be reduced.

123. With the CITES, the ITTA, and the ITTO, no less than sixteen groups, including their support staff, would need to be commonly housed. *See* CITES Resolution, *supra* note 118 (listing the necessary forestry groups).

124. Two common meetings of the Secretariats that were organized by UNEP already have occurred, one in May 1995, and the other more recently in Geneva. *See* Interview with Edith Brown Weiss, *supra* note 114.

garding certain species.[125] Even though these meetings may not resolve current conflicts,[126] they most likely would point out areas of potential conflict and congestion, and could prevent future conflicts from occurring.

B. *Alternative Proposals to Alleviating the Problem of Treaty Congestion*

This section discusses two alternative proposals to address the problem of treaty congestion. The first alternative is the use of the Internet to facilitate communication among countries, secretariats, and international organizations. The Internet also may be used in conjunction with any of the other alternatives discussed in this article. The second alternative consists of the implementation of a "stop and think" provision, similar to that found in the National Environmental Policy Act (NEPA),[127] to be used in drafting new international environmental treaties and solving issues of treaty congestion in current ones.

1. The Internet

Use of the Internet to increase coordination among secretariats and to alleviate treaty congestion is a possible solution,

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125. Such meetings of secretariats of related conventions already is provided for under CITES Decision 10.132, which states that the secretariat of the CITES should establish

> good working relationships or, where possible, formal relationships with the secretariats or relevant departments of the following organizations:
> —International Tropical Timber Organization (ITTO)
> —Food and Agriculture Organization of the United Nations (FAO)
> —IUCN—The World Conservation Union
> —TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce)
> —World Conservation Monitoring Centre (WCMC).

Convention on International Trade in Endangered Species of Wild Fauna and Flora, Decision of the Conference of the Parties (visited Apr. 5, 1999) <http://www.wcmc.org.uk/CITES/english/edecis10.htm>. In addition, the CITES Secretariat is required to report results of working group meetings to the Secretariat of the Convention on Biological Diversity and the succeeding organization to the Intergovernmental Panel on Forests. *See id.*

126. Resolution of conflict may often entail amendment of the various treaties involved. In most cases, the amendment process must involve approval by the various parties to the conventions.

127. 42 U.S.C. §§ 4321-4347 (1994).

which, in the face of the Internet age, seems to be the most logical and least costly method.[128] Because the Internet requires no formal in-person gathering, secretariats and their staff could communicate instantly, frequently, and at a much lower cost.[129] As technology develops, more possibilities of online conferences between parties and the secretariats would be feasible.[130]

In addition to being used as a conferencing tool, the Internet could be helpful as a place for publishing important scientific and informational documents, as well as the treaties themselves.[131] Because this information can be easily accessed, it may be more readily studied by other existing conventions and by those parties wishing to draft a new treaty. Due to this increased exposure of ideas, it is likely that inconsistencies in new developing treaties could be avoided.

Finally, use of the Internet could alleviate some procedural aspects of treaty congestion by providing parties with an alternative method of reporting and submitting information to the necessary conventions. For example, under the CITES, customs officers in the various states could immediately enter information regarding the import and export certificates received at that customs site into an international database. The secretariat or monitoring organization would have immediate access to the information necessary to determine compliance. This would eliminate the need for customs officials to report to their own

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128. *See* Brown Weiss, *supra* note 5, at 700 (suggesting that the information revolution would aid in the problem of treaty congestion by making communications easier and less costly).

129. The transaction costs of Internet use would likely be less than travel expenses. *Cf.* Joel B. Eisen, *Are We Ready for Mediation in Cyberspace?*, 1998 BYU L. REV. 1305, 1340 (1998).

130. *See id.* at 1313 ("The rapid evolution of the Internet guarantees that even more revolutionary opportunities for interaction will soon be available. New forms of electronic meeting places may eventually allow participants to simulate face-to-face meetings.").

131. Many web sites currently contain various international environmental agreements. *See Index of /pidb/texts* (visited Jan. 22, 1999) <http://sedac.ciesin.org/pidb/texts/>. For example, the 1983 ITTA and the CITES texts may be found on the web at *Environmental Treaties and Resource Indicators (ENTRI)* (visited Jan. 22, 1999) <http://sedac.ceisin.org/pidb/texts/tropical.timber.1983.html>; *CITES* (visited Jan. 31, 1999) <http://www.wcmc.org.uk/CITES/english/>. In addition, the CITES has its own web page that contains the current parties to the agreement, a copy of the treaty and its appendices, and recent resolutions and decisions. *See id.*

governments and for their own governments then to report to the CITES secretariat, a process which currently takes years. State agencies would then be able to focus less time on procedural reporting issues and more time on substantive compliance issues.

On the downside, the cost of implementing this program would be great. Each customs official would need not only to have access to the Internet, but also proper computer training in order to be able to access and properly report information to the database. This would be especially difficult to implement in developing countries where monetary resources are already stretched to a premium. This systematic hurdle would need to be overcome before the benefits of the Internet in solving the problem of procedural treaty congestion could be fully appreciated.

2. "Stop and Think" Approach to Treaty Congestion

The final alternative to a potential treaty congestion resolution mechanism is the creation of a NEPA-like "stop and think" approach to treaty congestion. Although the identification of existing instruments that bear on the same subject matter of a proposal are part of the research currently performed at some stage of the treaty making process, this NEPA-like approach provides a more structured, consistent approach to addressing treaty congestion.[132]

a. The National Environmental Policy Act

NEPA, as one of its primary objectives, sets forth provisions to ensure that "federal agency [decision makers] give environmental factors appropriate consideration and weight."[133] NEPA seeks, as its objective, "[i]nformed, environmentally responsible [decision making]."[134] The United States Court of Appeals for the District of Columbia recognized this important objective in

132. *See* UNITED NATIONS, *supra* note 12, at 32-33.
133. NICHOLAS C. YOST, NEPA DESKBOOK 6 (2d ed. 1995).
134. *Id.*

making uninformed decision making a "harm" to be addressed by NEPA:

> NEPA was intended to ensure that decisions about federal actions would be made only after responsible [decision makers] had fully adverted to the environmental consequences of the actions, and had decided that the public benefits flowing from the actions outweighed their environmental costs. Thus, the harm with which courts must be concerned in NEPA cases is not, strictly speaking, harm to the environment, but rather the failure of [decision makers] to take environmental factors into account in the way that NEPA mandates.[135]

To effectuate this goal of informed decision making, NEPA requires that all agencies of the federal government shall include:

> in every recommendation or report on proposal for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and]
>
> (iii) alternatives to the proposed action.[136]

Prior to making this "detailed statement" or Environmental Impact Statement (EIS), the responsible official must "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved."[137] The EIS must be prepared early enough in the proposal stage that "it can serve practically as an important contribution to the [decision making] process."[138] The EIS is prepared in two stages: a draft EIS and a final EIS.[139] Both the draft EIS and the final EIS must be cir-

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135. *Id.* at 6 (citing Jones v. District of Columbia Redev. Land Agency, 499 F.2d 502, 512 (D.C. Cir. 1974), *cert. denied*, 423 U.S. 937 (1975)).

136. 42 U.S.C. § 4332(C)(i)-(iii) (1994).

137. *Id.* § 4332(C).

138. Council on Environmental Quality, 40 C.F.R. § 1502.5 (1998).

139. *See id.* § 1502.9(a)-(b).

culated to all federal agencies that have jurisdiction or special expertise with respect to the involved impact, to the applicant, and to any person who requests it.[140] The federal agencies that receive the EIS have a duty to comment.[141] Written comments also may be submitted by other individuals.[142] These comments must then be assessed and considered both individually and collectively in the decision making process.[143]

b. The NEPA Approach to International Environmental Treaty-Making

An International Environmental Treaty Analog (IETA) to NEPA would function with a similar goal of informed decision making as both an independent goal and as a means for preventing and resolving treaty congestion. Essentially, whenever an international organization seeks to propose a substantive amendment to an existing international environmental treaty or to draft a new international environmental treaty, the responsible secretariat or the international organization would prepare an International Environmental Treaty Statement (IETS), a functional comparison to the EIS.[144] In the case of already existing treaty congestion, both involved secretariats should participate in the drafting of a joint IETS, specifically addressing the particular conflict. Notice of the intent to create an IETS should be circulated to all international environmental organizations and secretariats with expertise or existing jurisdiction in the same basic subject matter as the involved IETS.[145] Following this notice, a draft IETS would be prepared by the responsible secretariat or international organization.[146] Copies of this draft IETS should be circulated to the above mentioned

140. *See id.* § 1502.19.
141. *See id.* § 1503.2.
142. *See id.* § 1503.1.
143. *See id.* § 1503.4. The agency is required to respond to the comments in one of the following manners: "(1) [m]odify alternatives including the proposed action; (2) [d]evelop and evaluate alternatives not previously given serious consideration by the agency; (3) [s]upplement, improve, or modify its analyses; [and] (4) [m]ake factual corrections." *Id.*
144. *See generally* 42 U.S.C. § 4332(C)(i)-(iii) (1994).
145. *See generally id.* § 4332(C).
146. *See generally* 40 C.F.R. § 1502.5.

parties and the environmental departments of each country, as well as be posted on the Internet for general review.

Receiving parties would then review the IETS and provide comments.[147] Comments should include conflicts between treaties and areas of particular treaty congestion that may arise if the provisions in the IETS are implemented.[148] Comments then would be considered and analyzed by the responsible secretariat or international organization.[149] Any treaty congestion issues should be addressed and resolved prior to the issuance of the final IETS to the convention, which will ultimately be responsible for drafting the treaty in which the IETS provision appears.[150]

The following is an example of the IETA in the current CITES and ITTA context. The United States wishes to propose to list bigleaf mahogany on Appendix II of the CITES. Upon notification of this proposal, the CITES secretariat, in conjunction with the United States, would send out notice to the secretariats of the ITTO, FAO, IUCN, TRAFFIC, ATTO, ATO, and WCMC, as well as other international organizations specializing in timber and forestry, of the United States's intention to create an IETS.[151]

The draft IETS then would be prepared by the CITES secretariat. The IETS should include the proposed listing, the impact that it would have on existing international environmental treaties, and an analysis of any alternatives. Copies of the draft would be sent to the previously mentioned groups, as well as signatories to the CITES convention. These receiving parties

147. *See generally id.* § 1503.2.

148. A similar requirement of notification of conflict already exists in some treaties, such as the Basel Convention. The Basel Convention states that a party must notify the secretariat of any bilateral, multilateral, or regional agreements or arrangements entered into prior to the Basel Convention for the purpose of controlling transboundary movements of hazardous wastes. *See* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, art. XI, 28 I.L.M. 657, 668. These existing provisions could provide additional stepping stones into an IETS process.

149. *See generally* 40 C.F.R. § 1503.4.

150. *See generally id.*

151. These organizations currently are in working relationships with the CITES secretariat. *See CITES Decisions of the 10th Conference of the Parties* 10.132 (visited Dec. 29, 1998) <http://www.wcmc.org.uk/CITES/english/edecis#10.htm#127>.

then would have a limited time, perhaps thirty to sixty days, to review the proposal, evaluate whether this proposal would create a conflict or congestion with their own treaty or existing treaties to which they are a party, and send comments to the CITES secretariat. The CITES secretariat then would consider the comments and prepare a final IETS either incorporating or explicitly rejecting these comments and addressing the specific issues of treaty congestion that arose. The final IETS then would be presented at the next conference of the parties for the CITES.

c. Analysis of the International Environmental Treaty Statement

Would the IETS structure work to solve the problem of treaty congestion? Early identification of potential areas of conflict through the IETS process would help to alleviate problems of treaty congestion before they arise. Because the process involves not only the proposing secretariat or international organization but also any secretariats or international organization with a potential conflict, a discussion of the treaty congestion issues is mandated. The process also ensures that before the secretariat or international organization takes action, it will have an informed view of the status of that particular provision in existing international environmental treaties. Treaty congestion issues should no longer come as a surprise; parties already will have thought through problems of treaty congestion under the IETS structure.

As with NEPA, there may be downfalls to the IETS structure. The first is time. It will take time and energy for a proposal to go through the IETS process. In order for this proposal to be effective, parties must carefully "stop and think" about the effects that the IETS may have on already existing international environmental treaties. This may slow the treaty making process. Lastly, if the IETS system is used excessively, although addressing substantive issues of treaty congestion, the IETS process may ultimately end up creating a new form of procedural treaty congestion.

IV. CONCLUSION

As long as international environmental treaties continue to proliferate in an uncoordinated fashion, the problem of treaty congestion will continue to exist. The use of working groups, such as the Timber Working Group, and the use of the Vienna Convention on the Law of Treaties may solve specific instances of substantive treaty congestion, but they will not solve the problem as a whole. Instead, efforts in the future should focus on creating a uniform system that seeks to addresses issues of treaty congestion, such as the IETS proposal, before they occur in the international communities. The Internet and frequent meetings of existing secretariats should be used by countries and international organizations to supplement this uniform system and increase communication among treaty making bodies in the international environmental community.

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