

Note to reader:

This paper constitutes a part of my larger PhD project, in which I am investigating factors that motivate negotiators' choice of justice principles in international negotiations with the aim of strengthening the theoretical link between justice and effectiveness of negotiations. All headlines are working titles and will be revised at a later stage. The empirical analysis has not yet been concluded, hence the draft does not include findings yet. Directional hypotheses outlined in the theory section point out expectations though. There is reference to a conceptual paper, also part of my larger PhD project, which discusses a more comprehensive approach towards 'justice' in environmental negotiations. The manuscript is in preparation and can be made available upon request.

I am looking forward to feedback on any aspect of the draft at this early stage.

Justice Behaviour in International Environmental Negotiations

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Abstract:

Questions of justice are often at the heart of international negotiations. While previous research has established a link between justice and the effectiveness of negotiations, the mechanisms behind justice behaviour in international negotiations remain understudied. Against this background, this paper will investigate the question: *What factors determine which justice principle negotiators invoke or agree to in international environmental negotiations?* In order to answer this question this study will apply a controlled comparison applying the congruence method to five pairs of cases, covering a broad range of environmental negotiations. Within each pair, one factor theorized to play an important role in shaping justice behaviour in environmental negotiations will be analysed. The factors are 1) setting of the negotiations, 2) power balance between the parties, 3) scientific (un)certainly, 4) domestic constituencies, and 5) common crisis experience.

The findings are expected to discern factors determining which justice principles negotiators invoke and under what conditions agreement on justice notions is promoted. Better understanding of what motivates negotiators' choices of justice principles and their mutual acceptance can help to strengthen the link between justice and effectiveness of negotiations. In this way, the paper's findings will be of relevance from both a research and policy perspective.

Introduction

On December 12, 2015, 196 parties adopted the Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC), a result of two weeks of intense negotiations at the 21st Conference of the Parties (COP21). The agreement was seen as a milestone in the global effort to address adverse effects of anthropogenic climate change. This perceived success was among other aspects, based on creative justice mechanisms, such as building parties' commitments on self-set and non-binding Intended Nationally Determined Contributions (INDCs). This approach was taken in contrast to previous, more prescriptive measures, such as the provisions under the Kyoto protocol that was signed in late 1997 but did not enter into force until 2005, largely due to lacking ratification by the US. The provisions in the Kyoto protocol were meant to spread costs for addressing climate change in a just manner between Annex I (largely developed countries) and non-Annex I (largely developing countries) parties, but were ultimately often perceived as unjust by countries on both sides. This dynamic points toward the important role of justice in environmental negotiations and its ability to both positively and negatively influence the negotiation process or outcome.

Justice plays an important role in the complex dynamics of international environmental negotiations. In some cases, justice principles can be conducive to a more effective negotiation process (Albin and Druckmann 2014 a, 2014b, and forthcoming), or increase the acceptability, legitimacy, and durability of the negotiated agreement (Druckman and Albin 2011, Kapstein 2008, Zartman 1995). For example, the negotiations of the Stockholm Convention on banning Persistent Organic Pollutants were marked by progressive distributive justice mechanisms and a proactive approach towards procedural justice principles that led to a comparatively fast conclusion of a robust and widely-accepted agreement. In other cases however, justice can become an obstacle to the successful conclusion of environmental negotiations. Parties can get so entrenched in discussions around those principles that they are unable to make progress on the substantive issues. Likewise, parties might be dissatisfied with distributive or procedural justice aspects of a particular negotiation and therefore unwilling to continue the process or accept the outcome. A case in point are the UNFCCC negotiations during the COP15 in Copenhagen, where perceived violations of justice principles led to a weak outcome in form of a two page statement that the plenum merely took note of.

While the potential for positive influence of justice principles on international negotiations is being increasingly recognized in the scholarly debate (Albin and Druckman 2014a, 2014b, Young and Wolf 1992, Zartman 1995), it remains unclear under what circumstances these

positive effects come to bear or when reverse effects might occur. In order to address this lacuna, it is important to take a step back in the causal chain and investigate factors that determine justice behaviour in international negotiations. Focussing on the field of environmental negotiations, this paper thus attempts to address the research question: *What factors determine which justice principle negotiators invoke or agree to in international environmental negotiations?*

Investigating factors that determine justice behaviour in international negotiations is important to understand what underlying assumptions and expectations negotiators bring to the table and how the dynamics of the negotiations process unfold. If more is known about the preceding factors, the theoretical link established between justice and effectiveness of international negotiations can be strengthened. Also, if factors can be discerned that promote or hamper the positive influence that justice can have on effectiveness, policy recommendations can be formulated regarding under what circumstances or in what form justice can be conducive and vice versa.

The study at hand aims to investigate such factors shaping justice behaviour in international environmental negotiations, thereby focussing on justice understood as perceptions expressed through statements by negotiators as representatives of state parties. A number of hypotheses will be tested on pairs of environmental negotiation cases through a controlled comparison applying the congruence method (George and Bennett 2005: 181ff.) in order to explain variation in justice adherence.

In the following, the notion of justice in environmental negotiations will be discussed shortly and justice principles in the focus of analysis will be identified. Subsequently, five factors that are theorized to shape justice behaviour in environmental negotiations will be discussed, namely the 1) setting (size) of the negotiations, 2) power balance between the parties, 3) scientific (un)certainly, 4) domestic constituencies, and 5) common crisis experience. The analysis of empirical cases will follow where for each factor respectively two environmental negotiation cases are contrasted. Thereby case selection is based on a "most similar" design (Przeworski and Teune 1970) to find cases that differ in outcome but are comparable on all but one of the theorised factors (as well as a number of other relevant characteristics). [Findings] are discussed in the penultimate section, followed by concluding remarks.

Justice in International Environmental Negotiations

Justice plays a role in almost all issue areas of international negotiations. In peace negotiations, parties seek justice for harm suffered during the conflict and for example satisfied justice claims have been found to impact the durability of peace agreements (Druckman and Albin 2011). In arms control cases, justice often relates to equal reductions or ceilings and can impact the effectiveness and legitimacy of the outcome (Albin and Druckman 2014a, Müller 2010, Tannenwald 2013). Similarly, in the field of economics, where the concept of the rational “economic man” is arguably most commonly and rigorously applied and the application of justice principles perhaps least expected, it has been found to influence negotiation effectiveness (Albin and Druckman 2014b, Fehr and Schmidt 1999). The decision for this study to focus on the role of justice in environmental negotiations is based on a number of factors.

Firstly, and perhaps most importantly, environmental negotiations are one of the most prevalent forms of international negotiations in today’s globalized world. This is underlined by a growing body of research on justice in environmental negotiations such as studies dealing with normative concerns in regulating carbon trading (Page 2012), fair distribution of access to water resources (Zeitoun 2013), or equitable burden sharing of costs of climate change mitigation and adaptation (e.g. Young and Wolf 1992, Ringius et al 2002), to name but a few. The items on the agenda are of a transboundary, or even global, character and hence addressing them requires a coordinated international response (Kaul and Mendoza 2003: 97ff.). At the same time, cooperative agreements between two or more states often remain the best, or even only, alternative in addressing threats emerging from environmental change. Both negative effects of states’ conduct, i.e. environmental degradation, and positive effects of mitigation efforts do not halt at state borders and are non-excludable¹. At the same time, usually a considerable number of states is needed to change their polluting conduct or partake in mitigation efforts in order to achieve substantial improvement. Thus, unilateral action is rarely a feasible alternative to international negotiations.

A second reason to focus on the environmental issue area is that justice mechanisms are very central to environmental negotiations and in many cases explicitly addressed. It is commonly recognized that developed countries were the main contributors to and profiteers of decades of environmental exploitation. Therefore they bear a particular responsibility regarding mitigation

¹ Items that are considered non-excludable cannot be withheld from parties not participating in a joint undertaking to leading to the cooperative benefit, hence creating problems of “free-riding”, that is profiting from other parties’ efforts without an own contribution. Many environmental issues are in line with this characteristic due to their transboundary nature.

of and adaption to environmental threats. Many justice debates in environmental negotiations build on this responsibility aspect on multiple levels, including the international, intranational, and intergenerational level (Rao 2013, Weiss 1993, 2008). While the responsibility of developed states to take action and to support other countries is generally acknowledged, the details of it remain heatedly debated. When does responsibility set in, considering that in the early years of industrialization parties were arguably unaware of the negative consequences of their conduct for the environment? What should be the extent to which developed countries transfer technical and financial support to less developed countries – to support them in ensuring provision of basic human needs or further, to aim to equalise economic capabilities? What is the responsibility of emerging economies, such as Brazil, China, and India that do not count toward the developed countries, but are for example among the major emitters of carbon dioxide? These are just a few of the questions that drive debates in environmental negotiations, where justice principles are explicitly and centrally addressed.

A third reason to focus on the environmental issue area is a more pragmatic one concerning data availability. Environmental negotiations moved into the focus of international negotiations comparatively recently, following the 1972 United Nations Conference on the Human Environment held in Stockholm. Thus, the cases in this issue area tend to be fairly well documented. Additionally, because environmental negotiations tend not to count towards “hard” security issues, documentation is more readily available, including for most recent or contemporary cases. With the three reasons as outlined above in mind, the issue area of environmental negotiations lends itself in particular to the analysis of justice behaviour in international negotiations with the aim of discerning patterns and trends across cases that should lead to generalizable results.

Justice as a central theme to environmental negotiations has been the subject of an increasing number of scientific studies over the past decades. Despite this growing body of research on the concept, there is no single definition of ‘justice’ in environmental negotiations. Given the complexity of the phenomenon and the contested nature of the terminology, this does not come as a surprise. At the same time, however, the literature is also marked by a lack of a comprehensive approach towards justice in environmental negotiations. Definitions are often borrowed from other fields of research or jargon used by practitioners in negotiations and is hence often too broad, covers the concept only partially, or is too functionally oriented. Thus, as developed elsewhere (Tritschoks, *manuscript in preparation*), a more comprehensive approach towards justice in environmental negotiations is suggested that should cover all

important components of justice that are characteristic for this issue area, considering unique feature of environmental negotiations. The components that have been found to be crucial for a comprehensive approach towards justice in environmental negotiations encompass the reference to both procedural and distributive justice, the recognition of the independent merit of justice going beyond pure national economic interest, the inclusion of parties that are unable to reciprocate in a strict sense of the term, and the consideration of both retrospective and prospective aspects. *Firstly*, in many studies the focus of investigating the role of justice has been placed on distributive issues that is “principles for allocating benefits or burdens among the members of a group or community” (Druckman and Wagner 2016: 389). More recently, stronger emphasis has been placed on the role of procedural justice issues or “principles for guiding the negotiation process toward agreement” (ibid: 391). For a comprehensive approach, it is expected that both components should equally be regarded, particularly because it is argued that they interact and affect each other rather than assuming only one component to moderate the other². *Secondly*, some studies argue that justice positions of negotiators are largely “correlated with the self-interest of the negotiating parties” (Lange et al. 2010: 370) and hence doubt the independent merit of justice in environmental negotiations. While there will surely be overlap between negotiators’ justice positions and parties’ self-interest, this study argues that a pure tactical use of justice principles is not very common because justice claims have to be credible enough not to be outright dismissed (Albin 2015: 52) and “schemes that are too obviously self-serving have little power to persuade others” (Young and Wolf 1992: 51). Therefore, it is assumed that justice in environmental negotiations has merit on its own and goes beyond pure self-interest of the negotiators. *Thirdly*, many traditional definitions of justice are based on assumptions of reciprocity and that negotiated agreements are ultimately based on expected return in the bargaining game (Rawls 1971, Gauthier 1986, Barry 1989). However, in the environmental issue area, parties are included and their concerns taken into account, that cannot strictly reciprocate. For example, the inclusion of least developed countries or small island states, as well as future generations’ concerns could not be explained through theories based on strict reciprocity. Instead, they have to consider alternative explanations and more fluid understandings of reciprocity, related to deeper rooted values and beliefs. Thus, a comprehensive approach towards justice in environmental negotiations should consider the inclusion of ‘non-reciprocators’ as part of the justice concept. *Lastly*, previous definitions of justice in negotiations often focus on the backward orientation (Welch 1993, 2014, Zartman

² For a more comprehensive discussion, see Tritschoks, *manuscript in preparation*.

1995, Grasso 2010) of equalizing desert. A few studies emphasise a need for forward orientation instead (Zartman 2005). It is argued here, however, that neither reference point works without satisfying the other and that both aspects should be equally considered under a comprehensive approach toward justice in environmental negotiations.

Thus, justice in this study is understood as negotiators' stated willingness to find a convergence point of all affected parties' interests through proposals perceived to address past, current, or future desert on both the distributive and procedural level. Negotiators' statements in line with this approach will be considered as part of the justice behaviour in the environmental negotiation cases analysed in this study. Thereby, justice principles will be measured as either pertaining to distributive justice or procedural justice, each operationalized in four different principles respectively. Distributive justice encompasses three principles most commonly referred to in the literature. *Equality* refers to an equal or fair division of shares, *proportionality* (sometimes referred to as equity) foresees a division of shares in accordance to individual contributions, and *need* considers fair shares based on individual needs or desert (Deutsch 1975, Eckhoff, 1974, Cook and Hegtvædt 1983). A fourth principle, not always included but yet important, is that of *compensation*, in terms of indemnification for incurred loss or damage. (Cook and Hegtvædt 1983, Albin and Druckmann forthcoming, Zartman 1992).

The procedural justice principles include *fair representation* that refers to the inclusion of all relevant parties with a stake in the negotiation (Thibaut and Walker 1975), either through full representation - usually for smaller scale negotiations, or in form of balanced representation - often applied as the number of parties increases. *Fair treatment and play* regards the "opportunity to present information relevant to the decision" (Lind and Earley 1992: 231). *Transparency* of the process is marked by openness and accessibility of information. *Voluntary agreement* as a procedural justice principle reflects on the fact that the allocation outcome should be accepted by all parties on their own will and without coercion or duress. (Barry 1995).

This study argues that certain structural and perceptive factors determine which of these aspects negotiators will invoke in international environmental negotiations or how much agreement there will be on the justice principles. These factors are being introduced and discussed in the following section.

Factors Influencing Justice Behaviour

Based on the analysis of previous literature and in-depth case studies of environmental negotiations cases, five factors that determine justice behaviour in international negotiations have been discerned. These factors are the 1) setting of the negotiations, 2) power balance between the parties, 3) scientific (un)certainty, 4) domestic constituencies, and 5) common crisis experience, and will be discussed in turn below. The list is by no means exhaustive, but includes those factors that are seen as fundamental and pertaining to most environmental negotiation cases thus allowing for an analysis across a broad range of cases and the uncovering of relevant patterns. They include the most important structural factors in terms of the number of parties involved and the power relationships. Additionally, the list covers crucial perceptive factors that can shape the negotiators' perception of an issue and that have often been found to be influential in previous literature.

Setting of the Negotiation

This first factor focuses on whether the negotiations are of a bilateral or multilateral character. It is based on the theoretical argument that issues of complexity of the negotiation process will differ between the two settings. On the multilateral scale that involves an ever increasing number of parties and issues, procedural justice is put in focus very differently than in bilateral settings. Firstly, negotiation agenda and processes have to be simplified with the help of justice issues to make agreement possible in light of the many different parties and issues involved (Albin and Young, 2012). Secondly, multilateral negotiations are often marked by continuity, long term perspective, and expected repeat negotiation rounds, increasing the importance of procedural issues, whereas bilateral negotiations tend to be more definite and closed in time and hence can have a stronger focus on distributive issues. (Albin and Druckman, 2014b). Thus, the expectation for the first factor *size* is that procedural justice principles should be more pronounced in multilateral settings where complexity considerably reduces the role of distributive justice principles, while for bilateral settings distributive justice principles can play a more prominent role.

H1: In multilateral settings, negotiators will invoke PJ principles more often than DJ principles. The reverse is expected for bilateral settings.

Power Balance between the Negotiating Parties

A strictly rational choice argumentation in international negotiations theory would expect power inequalities to diminish the role of justice in negotiations simply because the more powerful party will likely be able to impose their position onto the other (see for example Gauthier 1986, Barry 1989). However, justice plays an important role also between perceived unequal states. While there are some studies arguing that states will only invoke justice principles that are in line with their national self-interest (Lange et al 2010), it is argued here that states can go beyond their pure economic self-interest and that justice plays an independent role in international negotiations. In the environmental issue area, power imbalance is not limited to traditional understandings of resource power but can also relate to “pollution exporters” and “pollution importers” (Sjöstedt 1993: 32), or states with very different capabilities to adapt. Given this multiplicity of power aspects, negotiations among states with considerable power imbalance are not uncommon in environmental negotiations. While notions of justice principles often overlap with national economic interest, there is still an independent merit to justice in negotiations and “moral and justice concerns are genuine and based on strong convictions, deeply enshrined in the belief system of greater or smaller powers and [...] their conflation with what we usually call national interest is what political leaders and bureaucrats believe is the right thing to do.” (Müller 2013: 362). In this context, justice plays an important role when weak parties bargain with the strong. For one, parties that recognize their comparatively weak power position in the negotiations might draw on justice principles to strengthen their bargaining position vis-à-vis the stronger parties. Additionally, weak parties in environmental negotiations, particularly developing and least developed countries, are often in a disadvantaged position because they do not have comparable capacities to partake in the complex and demanding negotiations. Their delegations are often considerably smaller than those of stronger economies and they often have to rely on external sources for technical expertise. Their diplomats “may only have a generalist’s understanding of the scientific and technical nature of the environmental problem under discussion” (Chasek 1997: 442). Thus, it can be expected that weaker parties will more often invoke procedural justice principles, not only to strengthen their position and standing, but also because they lack the capacity to engage and compete with stronger states on the often very technical issues regarding distributive justice.

H2: In negotiations marked by noticeable power inequality, the weaker party/parties will more frequently invoke procedural justice principles.

Scientific (un)certainty

Scientific uncertainty is a central component of most environmental negotiations. This uncertainty is not necessarily strategic, as given in most negotiation settings where parties have incentives to withhold information from each other. It rather rests on the unavailability of undisputed information. In the first instance, scientific uncertainty can play a role in parties' perceptions of whether a problem exists at all (Faure and Rubin 1993: 22). Once this hurdle has been taken, scientific uncertainty will usually surround a whole range of other aspects that are central to the negotiations, such as the underlying causes of the environmental degradation, the long term consequences of current practice, the most appropriate solution to an emerging problem, or the exact costs for mitigation and adaptation (Spector 1992, Faure and Rubin 1993, Sjöstedt 2009: 253). This leaves parties to the negotiation faced with the highly challenging task of choosing between either acting based on estimates and in the face of uncertainty, or postponing action waiting for greater scientific clarity but thereby risking to cause irreversible damage to the ecosystem. (Benedick 1993: 219, Chasek 2001: 29). Against the background of uncertainty regarding exact causes, consequences, and costs of behaviour that is harmful to the environment, a multitude of justice claims can reasonably be brought forward by the different negotiating parties. "One side's suggested solution may often be deemed just as feasible (or otherwise) as suggestions advanced by the other" (Faure and Rubin 1993: 22). In this context, science can play both a disabling and enabling role. Where multiple positions are supported by different scientific findings, coming to a political agreement will be incredibly difficult. Each side can claim their position to be just, as supported by the scientific evidence that suits them best. Suesskind and Ali speak of "adversary science" that can hinder progress in environmental negotiations by lending the same legitimacy to all claims brought to the table (2015). Reversely, where there is "consensual knowledge", that is findings that are accepted by broad consensus among scientific scholars (Skodvin and Underdal 2000: 24), scientific uncertainty will decrease and enable political agreement. Thereby it is not expected that uncertainty will be eliminated. Rather, what matters is that parties agree on a baseline model that can guide the negotiations and make political agreement possible (Underdal 2000: 183). This is not to say that science should be understood as a neutral, objective input that can help parties in determining the truly "just" approach to addressing an environmental problem. Scientific knowledge will always remain subject to interpretation and vulnerable to attempts of political manipulation. However, it has been found that "consensual knowledge" is rarely disputed by state parties and that parties are more willing to change their bargaining position with increasing availability of knowledge

(ibid.). Also, like-minded “epistemic communities” of scientists and experts have been found to be important in transforming the issue under negotiation to promote consensus and encourage compliance with an agreement (Haas 1989). Against this background, increased scientific knowledge is expected to narrow the range of available options for reasonable justice claims to be made and thereby facilitate consensus regarding which justice principle to invoke. This should pertain particularly to distributive justice, as scientific knowledge usually addresses the technical components of an environmental issues.

H3: When there is agreement on a scientific model as the basis for negotiations, negotiators will invoke and agree on distributive justice principles accordingly.

Domestic Constituencies

When analysing international negotiations between state parties, the latter are often simplified into being seen as a single entity for analytical purposes. However, it has been recognized that “while the actors between whom international negotiations take place are often individuals, at least as often they are groups or organizations, with complex internal workings of their own” (Rubin 2002: 99). For those internal dynamics, domestic constituencies are of particular importance. The logic of the two-level game developed by Putnam (1988) alludes to the fact that negotiating parties often need the support of their domestic constituency, be it democratic audiences, strong lobbies, or bureaucracies, in order to implement a negotiated agreement. This means that with growing interest and engagement of the domestic constituency, parties will be more limited in their bargaining range, because they have to feed back to the national level after agreement is struck on the international level. This can determine justice behaviour both in terms of genuine constraints or as a tactical tool. Still, justice can play both a constraining or promoting role. Kjellén discusses the constraining role in that there is often the dual challenge of coming to a substantive environmental agreement that satisfies not only the negotiating parties but also the domestic constituency, in order to increase the chances for ratification (2008). However, domestic audiences, particularly in democratic states, can also have a justice promoting effect. Where voters become aware of an environmental issue to the extent that they strongly favour timely conclusion of a negotiated agreement, negotiators might be motivated to move away from a position strictly in line with economic self-interest and be more likely to accept justice principles vis-à-vis other negotiating parties. This is also the case because they will be in a better position to justify to their domestic audience concessions made, based on moral arguments (justice principles) and in view of the need to conclude an agreement.

H4: Where domestic audience interest is high, negotiators will invoke the justice principles favoured by their respective domestic audience. Thereby domestic audience interest in timely conclusions of the negotiations will increase agreement on justice principles among negotiators.

Common crisis experience

In the environmental issue area, negotiations will often be initiated or spurred on by the parties most affected, the so called pollution importers (Sjöstedt 1993: 32), or the parties less capable to mitigate or adapt to environmental degradation. Thereby they are often times at least initially faced with an opponent that is unwilling to acknowledge the urgency of the matter in cases where they are less affected or better able to respond and hence unwilling to endure certain short term costs over uncertain long term benefits. In this situation, appeals to justice principles are unlikely to promote progress in the negotiation process and may even stall it if parties get entrenched on opposing justice positions. When parties undergo a common crisis experience in form of an extraordinary event that highlights the negative consequences and related threats of environmental degradation to both parties to a considerable extent, this dynamic is expected to change. Thereby the experience of negative consequences can take place in form of incurred damage or costs to state's territory or population. While it has been found that the experience of a crisis can encourage the initiation of international negotiations (Hampson 1999: 34f.), it is argued here that it can also change the dynamics throughout the negotiation process and effect justice behaviour by the involved parties. There are at least three different pathways through which this change occurs. Firstly, the common experience of a crisis will increase the understanding of the environmental degradation as being a threat to all parties and thereby balance the power positions of parties involved in the sense that all parties will recognize their dependency on the conclusion of a negotiated agreement to address the problem faced. Secondly, when parties are able to reframe the issue as "risk of common loss", they can divert from the focus on negotiating costs for mitigation or adaptation and rather focus on developing "common aversion strategies" (Suesskind and Ali 2015), thereby increasing the likelihood for cooperation. Thirdly, a crisis experience will usually increase the attention of domestic audiences to a given issue and strengthen the call for consensual scientific evidence (Haas 1990: 352f.), thereby strengthening the dynamics as outlined in the two previous sections.

In that context, the common experience of an extraordinary environmental crisis underlining the harmful consequences of current conduct to all parties, is expected to increase the convergence of justice notions in international environmental negotiations.

H5: The joint experience of an environmental crisis will increase agreement on distributive and procedural justice principles invoked.

As particularly the last discussion illustrates, the factors outlined here are interacting and can moderate each other's influence on justice behaviour in international negotiations. For example, crisis experience can change the perceived power balance, activate domestic audiences, or stimulate increased demand for scientific knowledge. Likewise, the setting in terms of bilateral or multilateral level negotiations may have different implication for the role of domestic audiences or epistemic communities of scientists and experts. For example, with an increased number of states involved, respective domestic audiences opinion will gain in weight, and given cross-border coordination, can improve their position of influence vis-à-vis their governments. In a similar vein, with a larger number of parties involved, there will presumably be an increased number of experts engaged with an issue, enabling collaborative efforts, potentially strengthening consensual knowledge positions, and allowing the building of transnational actor networks (ref.). More of these types of interlinkages could possibly be found. The important conclusion to be drawn is that while in practice, these factors should be understood as integral parts of a complex dynamic in international environmental negotiations, for analytical purposes it is important to apply a strict methodology and case selection in order to be able to isolate individual effects as best as possible. The next session discusses these two aspects for this paper.

Methodology and Case Selection

This paper aims to identify factors that influence justice behavior in international environmental negotiations. Leaning on previous research and findings from related disciplines or fields of study, five factors have been identified that are theorized to influence what type of justice principle will be invoked or how much congruence there will be among justice principles invoked by negotiators. For each factor respectively, a directional statement in form of a hypothesis has been formulated. In order to evaluate the truth value of the hypotheses, this paper will apply a controlled comparison through the congruence method (George and Bennett 2005: 181ff.). This approach has been found to be valuable for theories that have been “formulated or

postulated by the investigator for the first time” (ibid.: 182), as is the case for the factors theorized in this paper. In order to test the hypotheses, the explanatory factors identified have to be dichotomized where no natural dichotomy is given (Gerring 2007: 133). The theorized factors can then be used to develop expectations or predictions for outcomes of relevant cases. If there is congruence between the theoretical prediction and the given outcome of a case, the hypothesis can be assumed to depict a causal link. In order to control for the influence of alternative variables, the congruence method will be applied across pairs of cases that are being selected based on a “most similar” case design (Przeworski and Teune 1970). Here, cases should ideally be comparable on all factors that were identified to be relevant for the variation on the dependent variable except for one, in order to isolate the effect of the explanatory variable under investigation. This method of identifying cases that differ only on the factor of interest but not on “other possible causal factors” has been found to lend itself to hypothesis-testing (Gerring 2007: 131). In order to make an assessment for the range of factors outlined in the theory section, a pair of environmental negotiations cases was selected for each factor respectively. Thereby, case selection was based on variation in the explanatory variable in accordance with the theorized statements developed above, while the dependent variable of justice behavior was left to vary (King, Keohane and Verba 1994: 149.) As secondary factors, variation across the cases on a range of characteristics such as geographical spread, time, and environmental issue addressed were also considered. For practical reasons data availability also played a role.

A list of potential cases could be as follows :

Setting:

- Mediterranean Shores (Fr/Italy + Monaco) vs. Convention For The Protection Of The Mediterranean Sea Against Pollution (MedPlan) both 1976

Power balance:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal vs. Central American Regional Agreement On The Transboundary Movement Of Hazardous Wastes

Scientific (un)certainity:

- Acid Rain US-CAN vis á vis Acid Rain EU (+US and CAN) (alternatively, Acid Rain Europe within case study)

Domestic constituency:

- Whaling Moratorium under the International Convention for the Regulation of Whaling

Common crisis:

- MARPOL 73 vs MARPOL 78 (pre-/post- 76/77 tanker accidents)
- Alternatives: Assistance convention negs pre-/post- 1986 Chernobyl; Industrial accidents, e.g. Sandoz Germany/Switzerland

Empirical Analysis (1-5)

The empirical analysis has not yet been concluded. The hypothesis developed in the theory section point towards expectations for the controlled comparison and congruence method results. Any deviation from the proposed hypotheses will make for an interesting re-evaluation of the effect of the hypothesized factor on variation in justice behaviour.

Discussion

Next to the findings, this section will discuss limitations of the paper. This includes challenges faced with the methodological approach, i.e. that the small number of cases does not allow for assessment whether any of the factors identified are necessary conditions (George and Bennett 2005: 189). Also, even when the “most similar” design is rigorously applied, there remain limitations to the comparability of cases that deal with social phenomena. Thus, in further research any factors that have been identified to play a role in influencing justice behaviour could be further tested through process tracing in order to validate the findings, investigate causal pathways, and so forth. Additionally, the findings could be tested on a larger set of cases in form of a quantitative study, possibly also transporting them to other issuer areas in order to test whether the results hold.

Conclusion

Bibliography

- Albin, Cecilia (2015). The Many Faces of Justice in International Negotiations. *International Negotiation* 20: 41–58.
- Albin, Cecilia and Druckman, Daniel (2014a). Bargaining over Weapons: Justice and Effectiveness in Arms Control Negotiations. *International Negotiation* 19: 426–458.
- Albin, Cecilia and Druckman, Daniel (2014b). Procedures matter: Justice and effectiveness in international trade negotiations. *European Journal of International Relations* 20: 1014–1042.
- Albin, Cecilia and Druckman, Daniel (forthcoming). Justice and effectiveness in international environmental negotiations. Article, under review.
- Albin, Cecilia and Young, Ariel (2012). Setting the Table for Success – or Failure? Agenda Management in the WTO. *International Negotiation* 17/1: 37-64.
- Barry, Brian (1989). *Democracy, Power, and Justice*. Oxford, Clarendon Press.
- Barry, Brian (1995). *Justice as Impartiality*. Oxford, Clarendon Press.
- Benedick, Richard Elliot (1993). Perspectives of a Negotiation Practitioner. In: Sjöstedt, Gunnar (ed.), *International Environmental Negotiations*. Newbury Park, Sage Publications, 219-243.
- Chasek, P. (1997). A Comparative Analysis of Multilateral Environmental Negotiations. *Group Decision and Negotiation* 6: 437–461.
- Chasek, P. (2001). *Earth Negotiations – Analyzing Thirty Years of Environmental Diplomacy*. New York, United Nations University Press.
- Cook, Karen S., and Hegtvedt, Karen A. (1983). Distributive Justice, Equity, and Equality. *Annual Review of Sociology* 9: 217–241.
- Deutsch, Morton (1975). Equity, Equality, and Need: What Determines Which Value Will Be Used as the Basis of Distributive Justice? *Journal of Social Issues* 31: 137–149.
- Druckman, Daniel and Albin, Cecilia (2011). Distributive Justice and the Durability of Peace Agreements. *Review of International Studies* 37: 1137-1168.
- Druckman, Daniel and Wagner, Lynn (2016). Justice and Negotiation. *Annual Review of Psychology* 67: 387–413.
- Eckhoff, Torstein (1974). *Justice Its Determinants in Social Interaction*. Rotterdam, Rotterdam Press.
- Faure, Guy-Olivier and Rubin, Jeffrey Z. (1993). Organizing Concepts and Questions. In: Sjöstedt, Gunnar (ed.), *International Environmental Negotiations*. Newbury Park, Sage Publications, 17-26.
- Fehr, Ernst and Schmidt, Klaus (1999). A Theory of Fairness, Competition, and Cooperation. *The Quarterly Journal of Economics* 114: 817–868.
- Gauthier, David (1986). *Morals by Agreement*. Oxford, Oxford University Press.
- George, Alexander L. and Bennett, Andrew (2005). *Case Studies and Theory Development in the Social Sciences*. Cambridge, MIT Press.
- Gerring, John (2007). *Case Study Research: Principles and Practices*. Cambridge, Cambridge University Press.
- Grasso, M. (2010). The role of justice in the North–South conflict in climate change: the case of negotiations on the Adaptation Fund. *Int Environ Agreements* 11: 361–377.
- Haas, Peter M. (1989). Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control. *International Organization* 43: 377–403.
- Haas, P.M. (1990). Obtaining International Environmental Protection through Epistemic Consensus. *Millennium - Journal of International Studies* 19: 347–363.
- Hampson, Fen Olser (1999). *Multilateral negotiations: lessons from arms control, trade, and the environment*. Baltimore, Johns Hopkins University Press.

- Kapstein, Ethan (2008). Fairness Considerations in World Politics: Lessons from International Trade Negotiations. *Political Science Quarterly* 123: 229–245.
- Kaul, Inge and Ronald U. Mendoza (2003). Advancing the Concept of Public Goods. In: Kaul, Inge, Pedro Conceicao, and Katell Le Goulven (eds.), *Providing Global Public Goods: Managing Globalization*. Oxford, Oxford University Press, 78-111.
- King, Gary, Keohane, Robert O. and Verba Sidney (1994). *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, Princeton University Press.
- Kjellén, Bo (2008). *A New Diplomacy for Sustainable Development: The Challenge of Global Change*. London: Taylor & Francis.
- Lange, Andreas, Andreas Löschel, Carsten Vogt, and Andreas Ziegler (2010). On the Self-Interested Use of Equity in International Climate Negotiations. *European Economic Review* 54 (3): 359–75.
- Lind, E. Allan and P. Christopher Earley (1992), “Procedural Justice and Culture” *International Journal of Psychology* 27 (2): 227.
- Müller, Harald (2010). Between Power and Justice: Current Problems and Perspectives of the NPT Regime. *Strategic Analysis* 34: 189–201.
- Müller, Harald (2013). Agency is Central. In: Müller, Harald and Wunderlich, Carmen (eds.): *Norm Dynamics in Multilateral Arms Control. Interests, Conflict, and Justice*. Athens, Georgia: University of Georgia Press, 337-365.
- Page, Edward (2012). The hidden costs of carbon commodification: emissions trading, political legitimacy and procedural justice. *Democratization* 19: 932–950.
- Przeworski, Adam and Teune, Henry (1970). *The Logic of Comparative Social Inquiry*. New York, Wiley.
- Putnam, Robert (1988). Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization*, 41(3): 427–460.
- Rao, Narasimha (2013). International and intranational equity in sharing climate change mitigation burdens. *International Environmental Agreements* 14: 129–146.
- Rawls, John (1971). *A Theory of Justice*. The Belknap Press of Harvard University Press, Cambridge, Massachusetts.
- Ringius, Lasse, Torvanger, Asbjorn, and Underdal, Arild (2002). Burden Sharing and Fairness Principles in International Climate Policy. *International Environmental Agreements: Politics, Law and Economics* 2: 1–22.
- Rubin, Jeffrey Z. (2002). The Actors in Negotiation. In: Kremenyuk, Victoria A. (ed): *International Negotiation: Analysis, Approaches, Issues*. New York: Jossey-Bass, 97-109.
- Sjöstedt, Gunnar (1993). Special and Typical Attributes of International Environmental Negotiations. In: Sjöstedt, Gunnar, Svedin, Udo and Hägerhäll Aniansson, Britt (eds.). *International Environmental Negotiations: Process, Issues and Contexts*. Stockholm, Swedish Institute of International Affairs, 22-39.
- Sjöstedt, Gunnar (2009). Negotiating Climate Change. In: Avenhaus, Rudolf and Sjöstedt, Gunnar (eds.). *Negotiated Risk: International Talks on Hazardous Issues*. Springer, Berlin and Heidelberg, 229-257.
- Skodvin, Tora and Underdal, Arild (2000). Exploring the Dynamics of the Science-Politics Interaction. In: Andresen, Steinar, Skodvin Tora, Underdal Arild and Wettestad Jørgen (2000). *Science and politics in international environmental regimes: between integrity and involvement*. Manchester and New York, Manchester University Press): 22-34.
- Spector, Bertram I. (1992). *International Environmental Negotiations: Insights for Practice*. International Institute for Applied Systems Analysis, Executive Report 21.
- Susskind Lawrence E. and Ali, Saleem (2015). *Environmental Diplomacy Negotiating More Effective Global Agreements*. Oxford, Oxford University Press.

- Tannenwald, Nina (2013). Justice and Fairness in the Nuclear Nonproliferation Regime. *Ethics & International Affairs* 27: 299–317.
- Thibaut John and Walker Laurens (1975). *Procedural Justice: A Psychological Analysis*. Hillsdale, NJ: Lawrence Erlbaum.
- Tritschoks, Annkatrin (2016). Rethinking Justice in International Environmental Negotiations: Toward a More Comprehensive Approach. *Manuscript in preparation*.
- Underdal, Arild (2000). Comparative Conclusions. In: Andresen, Steinar, Skodvin Tora, Underdal Arild and Wettestad Jørgen (2000). *Science and politics in international environmental regimes: between integrity and involvement*. Manchester and New York, Manchester University Press): 181-201.
- Weiss, Edith (1993). International Environmental Law: Contemporary Issues and the Emergence of a New World Order. *Georgetown Law Journal* 81: 675-710.
- Weiss, Edith (2008). Climate Change, Intergenerational Equity, and International Law. *Vermont Journal of Environmental Law* 9: 615-628.
- Welch, David (1993). *Justice and the Genesis of War*. Cambridge: Cambridge University Press.
- Welch, David (2014). The Justice Motive in International Relations: Past, Present, and Future. *International Negotiation* 19: 410–425.
- Young, Peyton, and Wolf, Amanda (1992). Global Warming Negotiations: Does Fairness Matter? *The Brookings Review* 10: 46–51.
- Zartman, William (1992). International environmental negotiation: Challenges for analysis and practice. *Negotiation Journal* 8: 113–123.
- Zartman, William (1995). The Role of Justice in Global Security Negotiations. *American Behavioral Scientist* 38: 889–903.
- Zartman, William (2005). Looking Forward and Looking Backward on Negotiation Theory. In: Zartman, William and Kremenjuk, Victor (eds.): *Peace versus Justice, Negotiating Forward- and Backward-Looking Outcomes*. New York, Rowman & Littlefield Publishers, 289-301.
- Zeitoun, Mark (2013). Global environmental justice and international transboundary waters: an initial exploration. *Geographical Journal* 179: 141–149.