This is the submitted version of a paper published in *International Negotiation*.

Citation for the original published paper (version of record):

Tritschoks, A. (2018)
Rethinking Justice in International Environmental Negotiations: Toward a More Comprehensive Framework
*International Negotiation*, 23: 1-32
https://doi.org/10.1163/15718069-23031159

Access to the published version may require subscription.

N.B. When citing this work, cite the original published paper.

Permanent link to this version:
http://urn.kb.se/resolve?urn=urn:nbn:se:uu:diva-357803
Rethinking Justice in International Environmental Negotiations:

Toward a More Comprehensive Framework

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Acknowledgement:
Research for this article was supported by the Swedish Research Council, grant number 421-2012-5580.

Abstract:
Justice is central to international environmental negotiations, particularly pronounced, and specific in its manifestation. Central characteristics of this type of negotiation augment the complexities around justice and warrant a customized approach to the notion. Based on a discussion of these characteristics, the paper derives four components that are central to a more comprehensive theoretical framework for analyzing justice: 1.) Going beyond narrow self-interest, 2.) extending the notion of reciprocity, 3.) linking backward- and forward-orientation, 4.) coupling process and outcome. The usefulness of the framework is illustrated by its application to the comparison of two important Conference of the Parties (COP) under the United Nations Framework Convention on Climate Change, namely COP15 in Copenhagen and COP21 in Paris. The framework is suited for a systematic analysis of the complex role of justice in international environmental negotiation, one of the most prevalent avenues for addressing global threats emerging from anthropogenic environmental change.

Keywords: international negotiations; environmental negotiations; justice; theoretical framework
Introduction

In recent years, the research literature has increasingly recognized justice as a central component of international negotiations. Through negotiations, parties seek to address perceived injustices, justice can be an item on the agenda, a guiding referent, or used as a tactical tool (Albin 2015). Justice has been found to have the potential to positively influence the effectiveness of the negotiation process (Albin & Druckman 2016) as well as the acceptability, legitimacy, and durability of the outcome (Young & Wolf 1992, Zartman 1995). However, exactly under what circumstances or conditions justice in negotiations has this positive effect or when it plays a rather obstructive role, remains unclear.

Part of the challenge is that there is to date no systematic approach to studying of the role of justice in negotiations. The definitions of and approaches to the concept are numerous and often focus only on certain aspects of the notion, impeding a systematic analysis across cases. Thus, one step to a more systematic analysis is to develop a theoretical framework to justice in international negotiations that is more comprehensive than those previously available.

The paper at hand develops such a framework in the context of international environmental negotiations, an issue of global importance in which justice issues are central and often explicitly addressed. Central characteristics of environmental negotiations augment the dynamics that are central when developing a more comprehensive theoretical framework to justice in international negotiations. International environmental negotiations are therefore a suitable issue area for developing such a framework.
Earlier studies analyzing justice in environmental negotiations often borrow notions from other disciplines such as behavioral psychology or business management, or from practitioners’ language, for example commonly referenced principles such as polluter-pays or beneficiary-pays. Because of the different contexts in which they were developed, these approaches are often rather general or cover only certain aspects of justice. As further discussed in this article, they do not fully recognize the specific features of environmental negotiations (Ringius, Torvanger, & Underdal 2002, Dower 2004, Lange, Vogt, & Ziegler 2007, Hurlbert 2011, Brick & Visser 2015). This leads to a risk of conflating justice with parties’ positions, missing important interactions between different components of the concept, or not being able to separate justice adherence from negotiated agreement more generally, among other problems.

A more comprehensive theoretical framework is important to uncover relationships that might have gone unnoticed, for example between different aspects of the justice notion, and how they relate to each other. Improving the analysis of justice in environmental negotiations is essential in order to fathom the expectations and demands that parties bring to the table and is paramount to better understand the negotiation dynamics as they unfold in this particular issue area (Albin 2015, Druckman & Wagner 2016).

The more comprehensive theoretical framework of justice in international environmental negotiations developed here consists of four components: 1.) Going beyond narrow self-interest, 2.) extending the notion of reciprocity, 3.) linking backward- and forward-orientation, and 4.) coupling process and outcome. The paper develops a conceptual framework that captures what needs to be taken into account when analyzing justice empirically in the context of international environmental negotiations.
The term ‘justice’ in this paper refers to a framework, or formula (Zartman 1995, 1997), that guides the negotiations toward finding an implementable agreement. In this context, justice is not a static concept but based on a variety of ethical and cultural standards as well as situational factors and under constant development through interaction with others (Wolf 1997).

In this study, the issues are limited to environmental topics of global relevance negotiated in multilateral settings, where resources under negotiation elude individual state control, for example the world’s oceans, the atmosphere, biodiversity, and desertification. This is set apart from environmental resources that are more rivalling, such as negotiations over transboundary waters, forests, or territory.

Multilateral negotiation remains one of the most prevalent avenues for addressing the kind of threats emerging from anthropogenic environmental change, considering their transboundary effects and global character. Improving our understanding of these negotiations is thus imperative and with justice issues playing such a central role, a comprehensive theoretical framework to conceptualizing and analyzing this key value constitutes an important contribution to the field.

The paper proceeds by discussing central features that characterize international environmental negotiations and that warrant a customized approach to justice in this issue area. Based on these, the article then discusses the above mentioned components central to a comprehensive theoretical framework of justice in environmental negotiations. The usefulness of the framework is illustrated by application to the prominent case of Climate Change negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) focusing on the Conference of the Parties (COP) 15 in Copenhagen in 2009 and COP 21 in Paris in 2015. The analysis is followed by concluding remarks.
The Need for a Customized Approach

International environmental negotiations are characterized by extreme complexity. The number of interests and parties involved reaches into the hundreds, stakeholders cover an enormous bandwidth of actors, and media attention is often very high. The intricacy of the subject matter and interconnectedness to other issue areas add to the complexity. There are strong linkages to economic and political concerns, such as economic development, trade, human rights, and questions of sovereignty (Hurrell & Kingsbury 1992: 6, Faure & Rubin 1993: 21). International environmental negotiations arguably share these characteristics with other issue areas, as for example international trade negotiations, but there are a number of features central to international environmental negotiations that augment the already complex dynamics. This makes international environmental negotiations particularly relevant for conceptualizing justice.

First, *scientific uncertainty* is a central component of most environmental negotiations. Negotiations are usually characterized by a level of uncertainty as parties have strategic incentives to withhold information from each other. In the environmental context, this is augmented by uncertainty that is not strategic but rests on the unavailability of undisputed information. Scientific uncertainty affects all stages of environmental negotiations. Initially, it influences parties’ positions of whether a problem in need of a negotiated solution exists (Faure & Rubin 1993: 22). When negotiations are undertaken, scientific uncertainty shapes questions around underlying causes of environmental degradation, the long-term consequences of current practice, the most appropriate solution to a problem, or the exact costs for mitigation and adaptation (Spector 1992, Faure & Rubin 1993, Sjöstedt 2009). In a context of considerable scientific uncertainty, parties
can reasonably bring forward a multitude of justice claims. “One side’s suggested solution may often be deemed just as feasible (or otherwise) as suggestions advanced by the other” (Faure & Rubin 1993: 22). The more science can clarify the less room there is for politicizing arguments. The importance that scientific knowledge can play is well-illustrated by the European Acid Rain negotiations, where the acceptance of the Regional Acidification INformation and Simulation (RAINS) model as basis for the negotiations “contributed to the relative success of European negotiations and represents an important difference between events in Europe and North America” (Shaw 1993: 92).

A second characteristic central to environmental negotiations are the considerable and varying time spans between expected costs and benefits. In other issue areas such as trade or peace negotiations, negotiated outcomes comparatively soon provide a benefit, for example economically or as relief from casualties and destruction. “[R]eaching an agreement on an environmental problem is likely instead to increase the constraints imposed on all concerned” (Faure & Rubin 1993: 24). Costs for mitigation and adaptation are usually high and immediate, while benefits are often only to be expected in the distant future, potentially even after the time horizon of the actors at the negotiation table (Faure & Rubin 1993, Sjöstedt 1993, 2009). An example offer the negotiations on the Montreal Protocol on Substances that Deplete the Ozone Layer, where chlorofluorocarbons still exert an influence on the atmosphere up to a century after their phase-out due to their longevity (Benedick 1998). To complicate matters further, the time spans that parties operate under differ greatly, depending on the level of threat a country faces and its capacity to adapt. Some parties are under immediate pressure to tackle environmental issues as they already pose realistic threats, in extreme cases even to national security or existence. This is true, for example, for small island states in the climate change negotiations under the UNFCCC
that are threatened with inundation because of rising sea levels and already today suffer from climate change related effects such as “[c]oastal erosion, saline intrusion, sea flooding, and land-based pollution” (Smith, Schellnhuber, & Mirza 2001: 935). Other parties that are under less severe threat or in a better position to adapt to environmental change can operate under a much longer time frame. Justice is important in this context, in both international and intergenerational terms. It can help to moderate between different time frames of parties at the negotiation table and to balance immediate costs against benefits that may lie far in the future.

A third trait central to international environmental negotiations is the often non-excludable character of agenda items. In other issue areas, it is usually possible to make benefits of an agreement available exclusively to participating parties or signatories. In international environmental negotiations, benefits of an agreement typically “extend to all countries, people, and generations” (Kaul & Mendoza 2003: 95). Likewise, parties usually have no option of avoiding negative effects. A case in point is the atmosphere, central for example to Climate Change negotiations, the Stockholm Convention on Persistent Organic Pollutants (POPs), or the Montreal Protocol on Substances that Deplete the Ozone Layer, where emission of pollutants at any location has implications for the entire atmospheric system. When negotiating environmental global commons, negative as well as positive effects are transboundary and even environmental problems that pertain to a certain geographical region are increasingly seen in a global context (Sjöstedt 1993: 27). This leads to risks of ‘free-riding’.¹ In this context, justice can play an important role in

¹ The ‘free-riding’ dilemma describes a situation where parties have little incentive to comply with restrictive environmental agreements because they can benefit from other parties’ cooperative behavior and non-compliance cannot be penalized since the resource under negotiation is commonly available and cannot be withheld from specific users. However, if a significant number of parties follows this strategy, non-cooperation results, leading to the loss of the cooperative advantage or in this case to environmental degradation. (Chasek 2001)
enhancing institutional legitimacy and ensuring acceptability of an agreement, increasing the prospect of compliance with it.

A fourth central characteristic of international environmental negotiations is the multidimensionality and fluidity of power. While the concept of power is generally ambiguous, it is particularly hard to measure in this type of negotiation. Traditional negotiation concepts, such as BATNA work poorly.\(^2\) In other issue areas, military strength or economic resources tend to determine the power balance. The former usually does not play a particular role in international environmental negotiations. Economic power is relevant but not the only important aspect. There are additional dynamics that play out, based on countries’ pollution or preservation potential, the time span they operate under (see above), and the capacity and resources to participate in the negotiations. Pollution exporters are in a different power position vis-à-vis pollution importers given their direct control over the source of the pollution (Sjöstedt 1993). As discussed above, there are differences in the level of pressure countries are under and their capacities to adapt, which forms another aspect of power dynamics. International environmental negotiations are typically preceded by months or even years of preparatory negotiations and consist of multiple rounds before agreement can be struck. The negotiation rounds themselves often last over multiple days or even weeks with numerous parallel ongoing sessions, and require a high level of technical expertise. Thus, another power aspect relates to the technical and human resources that parties can bring to the table. Justice can play an important role in balancing power asymmetries and accommodating different capabilities of the parties.

\(^2\) Best Alternative to Negotiated Agreement (Fisher & Ury 1991)
Taking the central characteristics discussed so far into account, the paper continues by proposing four components of a customized and more comprehensive analytical framework to justice in international environmental negotiations.

**Four Components of a Comprehensive Framework**

*Going Beyond Narrow Self-Interest*

A comprehensive framework for analyzing justice in international environmental negotiations needs to go far beyond notions of narrow self-interest.

Previous studies analyzing the role of justice in environmental negotiations often consider justice in the context of parties self-interest or understand justice merely as a tactical tool used by parties to further their self-interested positions. For example, a study by Lange et al finds that justice principles embraced by country representatives are “mostly correlated with the self-interest of the negotiating parties” (Lange et al. 2010: 370). These findings neglect the dynamics that unfold throughout the negotiation process. Justice, as mentioned earlier, is not a static concept but developed through interaction with others. Lange et al.’s survey study captures parties’ positions when entering negotiations, while justice usually plays a stronger role in later phases (Albin 2001), and, by gathering responses outside an actual negotiation situation, might neglect the important role emotions play in perceiving fairness and judging behavior (Müller 2011). Strategic use of justice is related to considerations of self-interest. Parties call on justice principles in order to strengthen their bargaining position vis-à-vis counterparties, gain public support, justify inflexibility or unwillingness to compromise, and so forth. Given that international negotiations are two-level or better multi-level games (Putnam 1988, Rietig 2014, Janusch 2016), parties also
invoke justice to speak to certain domestic or transnational audiences. While the strategic use of justice is a reflection of self-interested motives, there is more to the role of justice in international environmental negotiations.

Given the central characteristics as outlined above, it is important to depart from analyzing justice in international environmental negotiations as self-interest maximization. Scientific uncertainty makes it difficult for parties to determine the exact point of maximization of their own interest. The long and differing cost-benefit-time spans complicate the assessment of maximum benefit at the time of negotiation. The often non-excludable character of agenda items means that any benefit reached through cooperation cannot be withheld from non-signatories while the cooperative benefit increases with the number of parties to an agreement. A maximization of self-interest would thus bear the risk of the free-riding dilemma as discussed above. In international environmental negotiations, the multidimensionality of power complicates asserting parties’ self-interest given that various power aspects may offset each other.

Given these complex dynamics, the relationship between self-interest and justice is not to be understood as unilateral. In a globalized and interconnected world, states are constantly engaged in negotiations. For this, they need to build “the kinds of mutually respectful, trusting relationships necessary for cooperation to achieve a stably peaceful and just international order.” (Bernstein 2015: 133) Therefore, using justice principles solely for tactical purposes is not a workable option. Justice claims must have enough merit on their own and must be credible enough not to be outright dismissed (Albin 2015: 52). “[S]chemes that are too obviously self-serving have little power to persuade others” (Young & Wolf 1992: 51) and will jeopardize the relationship needed for future cooperation. This goes beyond mere expanded notions of ‘enlightened self-interest’ that see moral
behavior resulting from the awareness about repeat encounters that cast a ‘shadow of the future’.

For example, multiple studies on ultimatum games show that justice considerations also play a role in single encounters and that people tend to act against the expectation of the ‘economic man’ (Müller & Druckman 2014) and prefer agreements that are more favorable to both or all sides (Fehr & Schmidt 1999, Kapstein 2008).

While self-interest influences parties’ preferences among a set of pre-determined justice principles, the dynamics around justice in international environmental negotiations are much more complex. Self-interest is not determined in a straightforward way but rather constantly re-evaluated based on justice considerations. Negotiators by definition aim to advance their own interest, however due to the central characteristics of international environmental negotiations, justice is an important component in shaping the way countries conceive of their interests in a broader sense.

A comprehensive framework for analyzing justice in international environmental negotiations has to take this bi-directional relationship into account.

**Extending the Notion of Reciprocity**

A comprehensive framework for analyzing justice in international environmental negotiation has to build on an extended or more flexible notion of reciprocity.

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3 The ‘shadow of the future’ is a game-theoretical concept that expects players to behave more cooperatively in repeat games because of the expected possibility to punish or reward behavior in future rounds. (Axelrod 1984)

4 The ultimatum game is an economic experiment in which a person A receives a fixed amount of a certain good of which a share determined by A is to be sent to a person B. If B accepts the bargain, both keep their share, if B rejects, neither receives anything. Studies show that A frequently makes more generous offers than expected under assumptions of strict self-interest maximization. (Fehr & Schmidt 1999)

5 Self-interest shaped by self-referring morality, including notions of “clean hands, duties to self, or integrity”, has been discussed on the individual level but not received sufficient attention in the context of international negotiations. (Nili 2016: 153)
Studies that borrow conceptualizations of justice from political theory are often based on notions of ‘strict’ reciprocity, where parties respond to a concession with another concession of equal value. The Rawlsian model sees justice as an agreement to everyone’s ‘reciprocal advantage’, reached from a starting point behind a ‘veil of ignorance’.

In reality, parties do have an assessment (be it correct or not) of their standing in the starting position, rendering the Rawlsian model difficult to apply to the analysis of justice in international environmental negotiations. Gauthier assumes justice to emanate from a bargaining situation that generates a “cooperative surplus” which can then be divided between the parties (Gauthier 1986). Empirical evidence from international environmental negotiations however suggests the regular inclusion of concerns pertaining to parties that are “unable to reciprocate or contribute to joint gains” (Albin 2001). Barry’s ‘justice as impartiality’ (Barry 1989, 1995) leans on Scanlon’s assumption that actors base their moral behavior on the desire “to justify one’s actions to others on grounds they could not reasonably reject” (Scanlon 1982). This reference to a trade-off between concessions and being perceived as reasonable by others opens up to an extended notion of reciprocity.

The central characteristics of international environmental negotiations undermine conceptualizations in which reciprocity occurs strictly around the negotiation table. Scientific uncertainty impedes determining what would be a truly reciprocal exchange. The long and differing cost-benefit time spans create large time windows for concessions that are difficult for negotiators to overview. They also lead to varying perceptions of reciprocity between parties. Reciprocal concessions are hard to implement in a situation where non-excludable goods are under

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6 The ‘veil of ignorance’ refers to parties being unaware of their position or standing at the starting point of the negotiations, the ‘original position’. The theoretical expectation is that parties would strive for equal basic liberties and a distribution that is beneficial even to the weakest member of the group, thereby reaching a just agreement. (Rawls 1971: 33)
negotiation. Finally, the *multidimensionality of power* complicates the weighing of concessions against each other and thereby further impedes the finding of a strictly reciprocal solution.

The limitations of strict reciprocity become particularly apparent with two groups of actors, namely small countries considered to be in a weak power position (such as Least Developed Countries, LDCs, and Small Islands Developing States, SIDS) and future generations. Neither can reciprocate directly or strictly in the bargaining situation, yet justice considerations are extended to cover these groups. For example, in negotiations on carbon emission cuts in climate change negotiations under the UNFCCC, SIDS are among the states most vulnerable to effects of atmospheric pollution and global warming. They are thus particularly dependent on international environmental agreements that aim to prevent further damage and offer support to manage unavoidable consequences (Corneloup & Mol 2013). At the same time, they can neither offer substantial emission cuts (because their emissions are of a negligible seize as compared to the global output) nor are they usually in a position to offer technical or financial assistance to larger emitters. Yet, SIDS participate in the UNFCCC negotiations and have their demands heard.7

Similarly, future generations cannot be part of a ‘strict’ reciprocal exchange. For one, there are theoretically no repercussions for violating future generations’ rights (however defined) because they do not have a representative at the negotiation table and no means of retaliating perceived injustices. Secondly, there are no means of verifying whether future generations uphold their part of the reciprocal bargain (Page 2012). Yet, reference is regularly made to (moral) obligation toward future generations (Weiss 2008). To name but one example, the Convention on Biological

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7 Notably, the SIDS’ position was strengthened through building a well-organized network, China’s support, their geo-strategic location, and the voting rights in the UN where the one-country-one-vote or consensus-based system grants them more leverage.
Diversity explicitly recognizes the value of biological diversity for present and future generations (UNFCCC 1992).

The argument is not that these groups lack the capacity to contribute to the negotiation process but rather that their “reciprocation” takes place on another level than strictly within the bargaining situation. External factors, such as interlinkages with other political dynamics, lending legitimacy to the negotiation process, satisfying ethical concerns of domestic audiences, or creating relationships beneficial for future cooperation, are part of the considerations. Furthermore, moral obligations towards future generations may be based on hypothetical reciprocation that future generations will recognize, value, and ideally continue the responsible conduct.

Therefore, the role of justice in international environmental negotiations has to include an extended notion of reciprocal exchange. A more comprehensive framework for analyzing justice, understands reciprocity as a fluid concept that does not necessarily take place directly or strictly within the bargaining situation but rather takes into account external or even hypothetical exchanges.

**Linking Backward- and Forward-Orientation**

A comprehensive framework for analyzing justice in international environmental negotiations needs to recognize both backward- or forward-looking aspects as interlinked.

Studies to date often focus on either backward looking or forward looking orientation when analyzing justice and see them as distinct elements. Most often, analysis of justice in international negotiations define the concept as based on notions of redress and desert (Welch 1993, 2014, Zartman 1995, Grasso 2010). For example, Welch defines justice as the “desire to correct a
perceived discrepancy between entitlements and benefits” (Welch 1993: 19). Zartman in earlier works proposed a definition of “justice as desert” (Zartman 1995: 893), recognizing later that this merely shifts the focus to a debate over the referents of what each party deserves. Specifically in the context of environmental negotiations, Grasso defines justice as a “fair process, which involves all relevant parties, of raising adaptation funds according to responsibility for climate impacts, and of allocating the funds raised in a manner that puts the most vulnerable first.” (Grasso 2010: 364) More recently, there has been a recognition of the limitations of backward-looking conceptualizations of justice. Zartman and Kremenyuk in ‘Peace versus Justice’ conclude that forward orientation is more conducive to reaching negotiated settlements. They find that “backward-looking negotiations are unable to reach a conclusion and only reiterate the conflict in diplomatic terms”, whereas “forward-looking negotiations lead to a resolving outcome” (Zartman 2005: 290–91). They rightly acknowledge the importance of forward-orientation and allude to some forward-looking aspects of justice. However, they continue to use the term ‘justice’ only in the context of backward-orientation and contrast it to a forward-looking approach of negotiations. A study by Dower is among the few that explicitly address the forward orientation of justice when analyzing its role in international negotiations. Justice is defined “as both a current means towards other current social goals such as peace, order and sustainable practices (e.g. because perceived injustice is one source of environmental neglect) and as a current means towards a future goal such as justice in the future” (Dower 2004: 403, emphasis in original). In this case, however, the proposed definition omits the backward-orientation that justice in environmental negotiations has to entail given the widely accepted historic responsibility argument.

8 Welch initially developed this definition in the context of conflict onset and later also applied it to the context of international negotiations. (Welch 2014)
The central characteristics of multilateral environmental negotiations warrant that a comprehensive analytical framework to justice sees both backward and forward orientation as necessary and interlinked. *Scientific uncertainty* often leaves open questions as to the exact causes of environmental degradation and what is the best way forward to remedy them. The differing *cost-benefit-time spans* result in a requirement to balance the recognition of responsibility with the need to move forward with the negotiation of an agreement. Negotiating *non-excludable* agenda items requires a comprehensive effort of not only those countries historically responsible but also those currently contributing to anthropogenic environmental change. The *multidimensionality of power* complicates the establishment of clear responsibility for past wrongs and current or future obligations, requiring creative approaches linking backward- and forward-orientation.

In climate change negotiations, the “historical responsibility on the part of the industrialized countries that exhausted most of the atmosphere’s capacity in the past” (Bentz-Hölzl & Brocker 2011: 260) has long been established. This ‘climate debt’ argument extends to other environmental issues as well. The recognized responsibility makes backward-orientation an indispensable component of justice. Ambiguity remains about how backward looking justice is to be achieved, given generational shifts, arguments of unintended and forced benefit, and changed power and emission dynamics over the past decades (Page 2008: 561–563).\(^9\) Similarly, though often neglected in the negotiations literature, forward-orientation is an indispensable component of justice in international environmental negotiations. It addresses parties’ immediate needs and is particularly relevant in the context of some countries that are under pressure to act for reasons of

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\(^9\) Unintended and forced benefit refers to the argument that current generations could not influence previous generations’ behavior and could not reject the benefit that was attained by it. This is invigorated by the fact that generations are not clearly distinguishable units but rather transition into each other seamlessly. Neglecting changed power and emission dynamics over the past decades, could potentially unduly burden comparatively low-emission industrialized countries vis-à-vis for example emerging economies (for a more comprehensive discussion of these arguments, see Page 2008).
national security or even existence. Forward-looking justice is also needed to balance parties’ standing for future negotiations and prevent further aggravation of existing imbalances. It is key in developing conducive working relationships needed in the global system of repeat encounters of negotiating parties over time and across issue areas (Bernstein 2015: 133). Furthermore, forward-looking justice is important to ensure flexibility and room for revision of negotiated agreements as scientific evidence substantiates. Given the centrality of the unequal responsibility argument, forward-orientation by itself is however also not sufficient and issues of desert and redress remain unavoidable components of any negotiated solution (Shue 1993, 2014).

When analyzing the role of justice in environmental negotiations, backward- and forward orientation cannot be seen as distinct elements or contrasted to each other. Rather, justice dynamics play out through the interlinkage of both aspects and a more comprehensive analytical framework of justice in this type of negotiation needs to look at both aspects and their interdependency.

**Coupling Process and Outcome**

A comprehensive framework for analyzing justice in international environmental negotiations needs, to a much greater extent than done to date, recognize distributive and procedural justice as interconnected and indispensable components of the concept.\(^{10}\)

The negotiations literature to date commonly focuses on either distributive (DJ) or procedural justice (PJ) or sees them as separate aspects that work independently of each other. Distributive justice regards “principles for allocating benefits or burdens among the members of a group or

\(^{10}\) It is important to note that there are a number of works that do take DJ and PJ into account simultaneously (see for example, Törnblom, Kjell Vermunt, Riël 2007, Albin & Druckman 2016). However, this point deserves more consistent attention and application across the field.
community” (Druckman & Wagner 2016). Procedural justice “refers to principles for guiding the
negotiation process toward agreement” (Druckman & Wagner 2016) and focusses on the
mechanisms, techniques, or the path to reach the allocation outcome (Walker, Lind, & Thibaut
1979, Cook & Hegtvedt 1983). Each aspect is commonly associated with a set of principles used
to identify distributive or procedural justice in negotiation analysis.11

The fact that analysis of the role of justice in international negotiations often only considers one
of the two aspects is based on different schools of thought around the comparative relevance of DJ
and PJ. One emphasizes distributive over procedural justice. Such studies argue that if the
negotiated outcome is considered fair, the process to reach it becomes secondary. Focusing on the
legitimacy of international institutions, Buchanan and Keohane (2006) discuss the notion of
‘comparative benefit’ as a criterion for the cooperative outcome as the benchmark for legitimacy.
It connects to Gauthier concept of justice as cooperation based on an expected ‘cooperative
surplus’ (1986: 14). In this line of argumentation, distributive justice dominates the perceived
justice of a negotiated agreement while procedural justice is less relevant.

An opposing school of thought emphasizes the role of procedures over the outcome. This approach
is based largely on findings from the field of social psychology and sees the outcome of a

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11 Distributive justice is most commonly associated with four principles. 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 (Eckhoff 1974, Deutsch 1975, Cook
& Hegtvedt 1983). Compensation regards indemnification for incurred loss or damage (Cook & Hegtvedt 1983,
Zartman 1992, Albin & Druckman 2016). Justice regarding the negotiation process can be further distinguished into
‘procedural justice’ which describes the structure and organisation of the decision making process and ‘interactional
justice’ which pertains to the way in which a party has been treated in terms of courtesy and respect” (Syme 2011:
287) (see also, Bies 2005). Interactional justice is commonly reflected in two principles. Fair representation regards
the inclusion of all relevant parties with a stake in the negotiation (Thibaut & Walker 1975) and fair treatment and play
regards the “opportunity to present information relevant to the decision” (Lind & Earley 1992: 231). Procedural
justice is associated with another two principles. Transparency of the process is marked by openness and accessibility
of information and voluntary agreement reflects that the allocation outcome should be accepted by all parties on their
own will and without coercion or duress (Barry 1995).
negotiation very much as a product of the process. It assumes that a just negotiation process can abrogate concerns over outcome justice (Van den Bos 2005). Rawls, for example, develops a pure procedural justice notion where the standard to be met for negotiations to be just is based entirely on criteria of a just procedure rather than criteria of a just outcome (Rawls 1999). Other authors also argue for a just procedure as key to providing legitimacy in environmental negotiations (Shue 1993, Grasso 2010).

However, a focus on either distributive or procedural justice alone is insufficient given the central features of international environmental negotiations. Scientific uncertainty poses a challenge for finding an outcome that is considered equally just by all parties. At the same time, a focus on procedural justice alone would pass up on important aspects of accountability and responsibility. The considerable cost-benefit time spans are contrasted by politically limited time horizons of the negotiators at the table. It is difficult for negotiators to determine and credibly communicate to their domestic constituencies the true benefits of cooperative behavior that may lie far in the future. Because the time spans differ considerably between the countries, reliance on procedural aspects alone risks disadvantaging the most vulnerable. Negotiating non-excludable goods increases the complexity of determining a distributive just agreement while putting a high burden on procedural justice in terms of inclusiveness and representation. In the face of the multidimensionality of power, procedural justice is needed to strengthen disadvantaged parties’ position in order to come to an outcome perceived as just enough to ensure its implementation.

Therefore, DJ and PJ have to be analyzed as interacting aspects. A range of studies from different disciplines found that perceptions of distributive justice can be moderated by perceptions of procedural justice (Lind & Earley 1992, Barry 1995, Albin & Druckman 2014, Druckman & Wagner 2016). Adherence to procedural justice can to some extent compensate for less favorable
distributive decisions. “[F]airness of the procedure has a value in addition to the justice of the decision” (Barry 1995: 111). It adds to the positive perception of a just decision and “where the justice of the decision is disputable […] the fairness of the process leading to the decision will make it more acceptable” (ibid.). An example illustrating this positive interplay are the negotiations of the Stockholm Convention on Persistent Organic Pollutants (POPs) where inventive procedural justice mechanisms enabled a comparatively quick conclusion of an agreement, despite initially considerable differences regarding distributive issues. Conversely, perceived outcome justice can to some extent moderate perceived violations of procedural justice (van den Bos, Vermunt, & Wilke 1997, Törnblom, Kjell Vermunt, Riël 2007). However, while DJ and PJ can moderate each other, neither can fully rectify the perceived violation or lack of the other.

Few studies recognize the important interplay between distributive and procedural justice. This insight has to be applied more consistently to the analysis of the role justice plays in international negotiations. Consequently, a comprehensive analytical framework of justice in environmental negotiations needs to understand both components as indispensable and interacting.

Applying the Conceptual Framework

In order to illustrate the usefulness of the more comprehensive framework to analyzing justice in international environmental negotiations it is applied to a prominent example of this type of negotiation. The framework is used to compare two Conference of the Parties (COP) under the United Nations Framework Convention on Climate Change (UNFCCC); the COP15 held in Copenhagen in 2009 and COP21 held in Paris in 2015. Both conferences set out to deliver a legally
binding document that outlines emission reduction for the subsequent commitment period under the UNFCCC. Both conferences were preceded by years of preparatory negotiations and expectations for the conclusion of a substantive agreement were high on both occasions. COP15 in Copenhagen ended with the plenary taking note of the Copenhagen Accord, a 2 page political statement with ambiguous legal status within the UNFCCC. This outcome was largely seen as a disappointment and failure (Meilstrup 2010). COP21 in Paris, on the other hand, ended in the adoption of the Paris Agreement, a legally-binding document that was hailed as a success by many participants and observers. Previous studies often cite justice violations at COP15 to have contributed to the negotiation failure, emphasizing procedural shortcomings that were also pointed out by some negotiation parties (Bodansky 2010; Tomlinson 2015; Monheim 2015). The presumed success of COP21 on the other hand, is attributed to transparency and fairness of the process (IISD 2015, Christoff 2016).

As becomes apparent at a closer look, the labelling of COP15 as a failure and COP21 as a success is not as clear-cut. The negotiations at Copenhagen, even though ending in a weak political agreement, nevertheless included important concessions and compromises that constituted breakthrough, which paved the way for subsequent, more comprehensive agreements. At the same time, the Paris Agreement, though legally binding, leaves some important shortcomings. The so-called Intended Nationally Determined Contributions (INDCs) themselves are not legally binding, the INDCs pledged thus far leave a considerable ambition gap, and ambiguities remain in the negotiation text that were left to be solved at subsequent, more technical negotiation rounds. Likewise, it is argued here that the distinction between justice violation at COP15 and justice adherence at COP21 is also not as clear-cut. Approaches to justice that focus only on certain aspects of the notion risk conflating justice with the negotiation outcome, as some assessments of
the respective negotiations rounds seem to indicate. The more comprehensive framework to analyzing justice as suggested here is better suited to shed light on the complex dynamics around justice at COP15 and COP21. To illustrate this, each of the four component will be briefly analyzed.

Going Beyond Self-interest

Notably, the Copenhagen Accord was the first agreement to contain specific pledges for significant amounts of financial assistance for adaptation and mitigation efforts, which was “seen as a major breakthrough in international negotiations on climate change” at the time (Meilstrup 2010: 133, see also Dimitrov 2010a: 22). Funds of 100 billion USD per year were pledged, which were furthermore only partially contingent on developing countries actions, while some of it was denoted as fast track financial assistance. This reflects a concession by developed countries that goes beyond what narrow self-interest would dictate. Additionally, all key players signaled a willingness to take action that reflects on a sense of moral responsibility beyond narrow self-interest. Among developed countries, the US, under the Obama administration announced their support for a global comprehensive agreement, the EU offered unilateral emission reduction regardless of the negotiation outcome as well as a detailed plan on financial pledges. Among the developing countries, emerging economies around the BASIC group (Brazil, China, India, South Africa) for the first time “accepted the idea of quantified targets” (Dimitrov 2010b: 805) and agreed to have their emission reduction pledges reflected in an international instrument, which “represents the first time that these countries have accepted any type of ‘internationalization’ of their national climate change policies” (Bodansky 2010: 240). A bottom-up approach was proposed in which countries would report their self-determined emission reduction commitments to other members of the convention, a break away from the rather top-down, prescriptive Kyoto provision.
This attempt at a flexible approach toward linking parties’ self-interest position to moral responsibility was however not enough to mitigate other shortcomings at COP15.

The understanding that all parties should contribute to quantifiable emission reduction targets, carried over into the lead-up to Paris as reflected in the ‘principle of common but differentiated responsibilities and respective capabilities’ (CBDR-RC). It manifested itself in the COP21 negotiations through deliberations around parties INDCs. These build on the bottom-up approach first introduced in Copenhagen and constitute an innovative way to signaling that all parties’ participation in an agreement is needed, while accounting for differentiation in responsibility and capacity. The Paris negotiations also reiterated the pledge for financial assistance, particularly for the most vulnerable, that shall amount to 100 billion USD per year, as first established at Copenhagen (Rhodes 2016). Furthermore, the Paris negotiations explicitly addressed notions of ambition, progression, and flexibility that indicated a move beyond narrow self-interest. For the first time under the UNFCCC, official language included the number of 1.5°C as a target for limiting global warming, a central concern of the most vulnerable parties, including the Small Island Developing States (SIDS) and Least Developed Countries (LDCs) (Christoff 2016: 776).\textsuperscript{12} The Paris negotiations also included language on progression of reduction targets and a regular global stocktake to ensure this progression. Furthermore, specific mechanisms would allow developing parties, especially SIDS and LDCs, flexibility in implementation and to increase their ambition level later. This indicates the willingness to reassess self-interest positions with time and changing circumstances.

\textsuperscript{12} Article 2(1) on ambition of the Paris Agreement states the goal of “holding the increase in the global average temperature to well below 2°C above preindustrial levels and to pursue efforts to limit the temperature increase to 1.5°C above preindustrial levels” (UNFCCC 2016).
In both cases, parties’ positions went beyond narrow self-interest, both through the recognition of common responsibility (in form of CBDR-RC) and the pledging of financial assistance. The bottom-up approach for the INDC system praised at Paris was in fact first proposed at Copenhagen. An addition at Paris was the explicit reference to ambition, progression, and flexibility.

**Extending the notion of reciprocity**

At Copenhagen the ostensibly strong parties favored a global warming limit of 2°C while historically, the most vulnerable parties, particularly small island states, insisted on a 1.5°C target. Though SIDS could not reciprocate strictly around the bargaining table in terms of substantive emission reductions, financial assistance, or technology transfer, the AOSIS (Alliance of Small Island States) countries were among the “most proactive players in the negotiations” (Dimitrov 2010b: 805). They strongly advocated for a moral obligation to aim for a 1.5°C target, and their reciprocal offer consisted of the option to be ‘on the right side of history’ (as well as presumably exchanges on external issues, given some of the countries’ strategic geopolitical location). As a result, the Copenhagen Accord included explicit reference to a reassessment of the 2°C target by 2015. While not entirely meeting the SIDS demands, this was an important concession on part of other key players that was not strictly reciprocal. At the same time, the Copenhagen negotiations revealed deep discrepancies regarding the understanding of what a reciprocal exchange should entail in terms of emission reductions. Developed countries perceived the emerging economies as unwilling to reciprocate their concessions (Dimitrov 2010b: 796). Developing countries on the other hand perceived the developed countries as not carrying their ‘historic responsibility’ to a large enough extent (IISD 2009). The notions ‘historic responsibility’ and ‘differentiation’ are important elements of the climate change negotiations and have been an integral part of the UNFCCC framework since their introduction at the 1992 Rio Conference. However, the extent
and interpretation of differentiation remains contested. The lack of convergence of the reciprocity notion, arguably contributed to the stalling of the negotiations and the weak outcome at Copenhagen.

As mentioned above, at Paris, the 1.5°C target for the first time entered the official agreement language, an important concession to the ostensibly weak parties highlighting the extended approach taken to reciprocity. Accommodating needs of SIDS and LDCs in terms of commitments, financial and technical assistance, and explicit reference to loss and damage further underlines that parties went beyond a strict notion of reciprocity at COP21 (IISD 2015). The INDC system allowed for a more flexible approach toward reciprocity in terms of responsibility and differentiation. It ensured the recognition of ‘historic responsibility’ at least regarding mitigation and adaptation in form of differentiation, while still involving reduction commitments by all parties. The bottom-up approach thereby left the assessment of what contribution would be “fair and ambitious” to the discretion of the parties (IISD 2015: 19, 43). The flexible or even ambiguous solution leads to parties now being faced with an ‘ambition gap’ but arguably enable progress at Paris by allowing for flexibility on the notion of reciprocity.

An extended notion of reciprocity played a role at both COP15 and COP21. However, the more flexible approach to reciprocity regarding responsibility and differentiation at Paris, arguably enabled more progress than in Copenhagen even though the ambiguous solution left an ‘ambition gap’ and much to be addressed in subsequent negotiations on interpretation and implementation.

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13 Loss and damage was added to the focus on mitigation and adaptation in form of the Warsaw International Mechanism on Loss and Damage during COP19, 2013, in Warsaw.
Linking backward and forward orientation

As mentioned, the notion of ‘historical responsibility’ was long established and accepted as part of the UNFCCC framework. At COP15 this recognition was expressed in developed countries’ willingness to undertake unilateral action and pledges for substantive financial assistance, given that they were historically the main emitters. At the same time, agreement was conditioned on contribution to emission reductions by emerging economies, which had in the meantime caught up with developed countries’ emission levels and were thus seen as key to a meaningful agreement. The BASIC group conceded to this by, for the first time, being willing to accept quantified targets based on the principle of common but differentiated responsibility. Differentiation on measurement, reporting, and verification (MRV) further underlines the linking of backward orientation (in terms of more stringent MRV for developed countries) and forward orientation (in terms of MRV for all parties). As stated above, the extent and interpretation of the differentiation principle remained contested at Copenhagen in turn leading to incongruent understandings of how to balance backward and forward orientation, impeding progress of the negotiations.

In Paris, the INDC system under the CBDR-RC principle likewise reflected the acknowledgement of ‘historic responsibility’ while aiming to orient the negotiations to moving forward. Notably, dissatisfaction remained regarding the issue of loss and damages that, while addressed in a separate article, did not include a recognition of developing parties ‘historic responsibility’ (Christoff 2016: 778–79). The “explicit exclusion of liability and compensation in the decision was a disappointment to many” (IISD 2015: 43) but did not turn into a major issue. At the same time, stronger emphasis on forward orientation was placed in Paris through the long-term goal of

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14 MRV mechanisms were differentiated between international MRV for developed countries and domestic MRV “with provisions for international consultation and analysis […]” for developing countries (UNFCCC 2009: Article 5).
progressive development on mitigation, a 5-year review cycle and global stocktake, and the flexibility mechanism. The ambition goal of the Paris Agreement asked for INDCs to be progressive in the sense that each new commitment round should be an increase from the previous one. A 5-year global stocktake should serve to review this collective progress (IISD 2015). The flexibility mechanism would allow developing countries, particularly the most vulnerable SIDS and LDCs, to adjust implementation of the transparency article regarding reporting and review in light of their capacities (IISD 2015). The differentiated approach to forward orientation was arguably conducive for progress in the Paris negotiations.

Backward and forward orientation are linked in both the COP15 and COP21 negotiations. Addressing historic responsibility has to be balanced against addressing current and future responsibility. The bottom-up approach to differentiation introduced late at Copenhagen was not enough to satisfy the parties at the time. Its advancement in form of the INDC system coupled with provisions for increased ambition, progression, and flexibility, was more successful at Paris even though ambiguities and dissatisfaction regarding loss and damages remained.

**Coupling process and outcome**

As mentioned above, analysis of COP15 often cite procedural issues as strongly contributing to the apparent negotiation ‘failure’ (Bodansky 2010; Tomlinson 2015). Indeed, some parties made explicit reference to procedural violations and the perceived nondemocratic way it had been arrived at in their rejection of the Copenhagen Accord (Monheim 2015). Shortcoming in procedural aspects included a draft text by the Danish presidency attempting to forge compromise that was leaked to the press ahead of it being tabled to the plenary and subsequently rejected as illegitimate and biased. During the negotiations, a perceived threat to be disadvantaged on distributive issues, lead parties to resist work in smaller but potentially more efficient groups than
the plenary (Bodansky 2010). Further, US president Obama announced the Copenhagen Accord, carved out in a small last minute meeting between the US and BASIC group, before the plenary had even seen it. However, it remains questionable whether agreement could have been struck without these diplomatic faux pas. Parties took issue with procedural decisions that were not deemed as problematic in other settings, such as the presidencies’ initiative to share a draft text to forge compromise or the convening of a group of ‘Friends of the Chair’ to facilitate progress in smaller negotiation groups.\(^{15}\) This indicates that it was not procedural issues alone that obstructed the negotiation process. Rather, the interaction of procedural and distributive aspects lead to the dissatisfactory outcome at COP15.

The COP21 negotiations are post-factum often praised for their transparency and inclusiveness. Indeed, the French presidency avoided some of the pitfalls encountered in Copenhagen. The high level segment was scheduled early on in the conference to increase the sense of ambition and avoid potential pressure towards the end (Christoff 2016). Further, no presidency text was tabled to ensure parties’ understanding of their “collective responsibility for [the negotiations] success or failure” (IISD 2015: 44). Instead of a selective group of friends of the chair, meetings and consultations were held in open-ended groups under the presidency-led Comité de Paris and in minister-led indabas. However, throughout the negotiations parties did raise concerns with procedural justice elements. The high pace of the negotiations lead to many parallel sessions, which put strains on parties with small delegations in particular. The presidency increased the

\[^{15}\text{For example, most recently the Moroccan presidency at COP22 shared a draft text for the Marrakech Action Proclamation on their own initiative that was not met with the same kind of resistance. Some delegates at COP15 even held that the compromise text tabled by the Danish presidency could have been a workable alternative to the complicated and heavily bracketed 200-page working text (IISD 2009). Also, forming smaller working groups is not an uncommon procedure to facilitate progress in large-scale negotiations. Though faced with challenges, regarding selection and representativeness, this mechanism has improved effectiveness in some cases, such as the Catargena Protocol on Biosafety negotiations (Depledge 2005: 129–130). Arguably, selection and perceived representativeness were problematic at COP15.}\]
pressure on delegates to reach a successful conclusion towards the scheduled end of the meeting (Stothard & Chassany 2015). On occasion, LDCs and SIDS criticized that their concerns had not been adequately heard (IISD 2015: 9, 15). Given the ‘single undertaking’ clause and concessions and flexibility on distributive elements (including the INDC system, the mention of the 1.5°C target, financial and technical assistance, capacity-building, etc.) parties appeared more willing to tolerate these procedural shortcomings in favor of reaching an agreement at Paris.  

Comparing Copenhagen and Paris

The comprehensive analysis applying the framework proposed here, shows that all four components of the analytical framework played a role at both COP15 and COP21. Each case respectively displayed strengths and shortcomings on different components of the justice concept. The components clearly interact and weigh against each other, as becomes apparent because key issues reoccur for multiple components. Many parallels can be drawn on the different components, regarding issues such as the long-term global warming target, pledges for substantive financial assistance, and the bottom-up approach to differentiation. There is however variation between the cases regarding the level of degree to which each component is addressed as well as the weighing of aspects under the four components. Thus, no single component can be blamed for failure or credited for success of the respective negotiation. Rather the interplay of the components and their aggregate value shapes the type of outcome that can be reached. The role of justice for negotiation effectiveness is not analysed in detail here. However, the application of the comprehensive analytical framework point toward shortcomings and contestations regarding the four components dominating in Copenhagen and thereby impeding a more substantive outcome. At the same time,

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16 ‘Single undertaking’ is a clause borrowed from the World Trade Organization negotiations that states ‘nothing is agreed until everything is agreed’.
positive aspects appear to outweigh the balance between components at Paris, thus enabling the conclusion of a more substantive agreement. Nevertheless, the more comprehensive framework reveals nuances among the four components at Paris that can help to explain why the Paris Agreement remains ambiguous and not comprehensive enough on many aspects. The more comprehensive framework to analyzing justice in international environmental negotiations thus proves better suited to capture these complexities than studies focusing on only some or parts of the components outlined.

**Conclusion**

Applying a more comprehensive analytical framework to the role of justice in international environmental negotiations allows to analyses the concept without conflating justice adherence with agreement more generally while still taking parties’ subjective assessment into account.\footnote{Allowing for an analysis of justice based on both internal and external referents. (cf. Albin 2015: 46–47)} It captures the complexities around justice in environmental negotiations and how the different components interact. In order to better understand what determines justice behavior and how it is linked to negotiation outcome and effectiveness, it is important to account for these complex dynamics, something a more comprehensive analytical framework to justice is better suited to do in a systematic way. Studies approaching justice by focusing on only one component or parts thereof risk missing important components of justice and how they interact.

Justice is central to international environmental negotiations, particularly pronounced, and specific in its manifestation. The particular characteristics of this type of negotiation warrant a customized approach to justice that is more comprehensive than notions to date. Based on these characteristics,
four components of a more comprehensive theoretical framework of justice in international environmental negotiations have been discussed. The concept goes beyond notions of narrow self-interest, applies an extended notion of reciprocity, integrates both backward and forward orientation, and sees procedural and distributive justice aspects as necessary and interacting. For a systematic analysis of the complex role of justice in international environmental negotiations, studies should apply this comprehensive analytical framework and consider the interplay of the different components.

Further research should investigate in how far the proposed concept applies to more disaggregate levels, such as within countries or regions, where an array of other dynamics is at play. It would also be interesting to further investigate how the different components weigh against each other.

The swift entry into force of the Paris Agreement and the statements of resolve issued at COP22 in Marrakech, particularly in face of the US election result, indicate that Climate Change negotiations will continue for a long time to come. The same goes for international environmental negotiations more generally since they are one of the most promising and prevalent avenues to addressing important global challenges related to anthropogenic environmental change. As long as this type of negotiation continues, justice will be an unavoidable part of the process and any agreement and it is thus imperative to further our understanding of these dynamics.
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