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PROCEDURAL JUSTICE IN CLIMATE NEGOTIATIONS: OUTCOMES AND IMPLEMENTATION

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Executive Summary: The incorporation of procedural justice principles into the negotiations conducted within the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) can contribute to the successful outcome of the negotiations as well as to the effective implementation of the negotiated decisions. Procedural justice (PJ) is manifested through actions linked to four principles: transparency, fair representation, fair treatment and fair play, and voluntary agreement. PJ is critically important for several reasons. Trust between the COP presidency and negotiators is built through transparency, predictability, fairness, and voluntary agreement. Outcomes are more likely to be implemented, even by those participants whose preferences were not favored in the agreement. In addition, better joint outcomes have been found to result from processes that are deemed to be more collaborative.

Key Points

- Research shows that negotiations that adhere to procedural justice lead to better and more durable outcomes.
- Procedural justice is achieved by transparency, fair representation, fair treatment, and voluntary agreement.
- The success of the UNFCCC negotiation process depends on the level of trust between the presidency and negotiators, and procedural justice contributes to building this trust.
- Consensus can be hard to achieve when it requires the convergence of almost 200 delegations' positions, but ignoring this element of procedural justice can result in backlash and mistrust.

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The Centre for Multilateral Negotiations provides public officials, non-state actors, and academics with a better understanding and key skills of reaching global agreements in highly complex multilateral settings. The Centre works towards fostering deeper cooperation on key global challenges by enabling more effective negotiation processes.

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Introduction

At the end of November 2018, approximately 22,000 representatives of governments, intergovernmental organizations, non-governmental organizations and businesses traveled by plane, train, automobile and even bicycle to a town in southern Poland. Representatives from 197 countries gathered in Katowice to negotiate decisions to be adopted by the 24th session of the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC). Other participants sought to influence negotiators and to take a front-row seat to history as they monitored the negotiation process.

The large number of attendees is closely related to the high stakes for the meeting: reports released in the lead up to the conference stressed the need for “unprecedented” transitions in all aspects of society to address climate change.² The institution that the international community has established to consider this challenge – the UNFCCC – convenes an annual meeting during which governments consider what they and the intergovernmental organizations they have created will collectively do. Their deliberations must conclude in consensus in order for any decision to be adopted. Ensuring that the negotiation process concludes with such a voluntary agreement, among other procedural justice

principles, can contribute to all parties going along with the agreement as well as to the effective implementation of the negotiated decisions.

Procedural justice is critically important for the UNFCCC for several reasons, each of which provides motivation to adhere to these principles. As noted above, the UNFCCC parties have not agreed upon Rules of Procedure to vote during COPs, rendering consensus (voluntary agreement) the *modus operandi*. In addition, the success of the UNFCCC negotiation process depends on the level of trust that has developed between the presidency and negotiators. This trust is built through transparency, predictability, fairness, and voluntary agreement, which are elements of procedural justice. It is evidenced in the actions taken rather than the words used by negotiators (Druckman, Lewicki, and Doyle, 2019). Furthermore, the implementation of UNFCCC decisions relies on voluntary compliance by the parties. Research has demonstrated that implementation of agreements is more likely when the implementers believe that the outcomes were reached through a procedurally just process, even if the outcome did not favor their position (Druckman and Wagner 2016).

This policy brief identifies the ways in which procedural justice (PJ) plays a role in climate change negotiations and reviews

¹ We appreciate the helpful suggestions made by two anonymous reviewers.

² IPCC. 2018. Global Warming of 1.5°C - Summary for Policymakers. Geneva: IPCC and WMO. https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

the links between PJ, outcomes and implementation of those outcomes. We seek to inform the process of future climate COPs by revealing the stakes involved with ensuring that the thousands of COP participants experience just procedures.

Procedural Justice in Climate Change Negotiations

Procedural justice is manifested through actions linked to four principles: transparency, fair representation, fair treatment and fair play, and voluntary agreement.

Transparency in a negotiation signifies an openness and accessibility to information related to the decision-making process and its outcomes (Heald 2006). In climate change negotiations, for example, transparency incorporates the work of the secretariat to publish documents related to the agenda and issues under discussion several months prior to each meeting. E-portals during meetings that ensure delegates have the most recent negotiating drafts are another way in which transparency can be manifested. Efforts by COP presidencies to organize “stocktaking” plenary sessions, during which the co-chairs for each negotiating group report on their progress to date at regular intervals during a COP, aim to ensure that all delegates know where the issues they are following are under discussion.

Fair representation indicates that parties, interests and other relevant stakeholders have a voice in the negotiation process (Leventhal et al. 1980, Thibaut and Walker 1976). In climate change negotiations, for example, fair representation is achieved

through the inclusion of representatives from all established negotiating groups when talks move to a small contact group setting. This principle was focused on in particular during the closing plenary of the 2009 Copenhagen Climate Change Conference, with delegates discussing who was, or was not, in the room when the proposed text was drafted.³ The practice of pairing delegates from developed and developing countries to co-chair contact groups also aims to ensure that multiple negotiating groups’ perspectives are represented. Adherence to the principle of fair representation was the key to effectiveness in a more general sample of environmental negotiations (Albin and Druckman, 2017)

Fair treatment and fair play refers to whether the participating parties have the opportunity to influence the process, beyond being invited to the table (Lind and Tyler 1988). Ensuring that scientific reports that feed into the talks take into account the perspectives and experience of all global regions is one way in which the framing of the issues can incorporate fair play principles. In the case of climate change negotiations, this framing element plays out in the drafting process of the IPCC reports. During the negotiation process, ensuring that time is adequate to hear from all delegations wishing to take the floor, and incorporating their perspectives into the draft proposals under discussion, touch upon fairness elements of the process. The question of who “controls the pen” when drafting the negotiation text has become an issue of contention in climate change negotiations, due to concern about whether and how the parties’ perspectives will be presented in the document to be drafted. In the lead up to the Paris Agreement on climate change, in 2015, the co-chairs

³ IISD. 2009. Summary of the Copenhagen Climate Change Conference. <http://enb.iisd.org/vol12/enb12459e.html>

labeled their proposed draft a “tool” because delegates were wary of the significance that would be assigned to the text if it were called a negotiating text.

Voluntary agreement is the extent to which proposals are freely accepted rather than being imposed (Barry 1996). The consensus requirement, in the lack of voting arrangements, drives the delivery of this principle, since every UNFCCC party has a veto power that needs to be respected. An instance in which this principle was not achieved for all delegations, and the COP president quickly gaveled the agreement to a close despite the desire of a delegation to voice its objection, illustrates the role of this principle in the negative, rather than positive, sense. At the close of the Doha Climate Change Conference in 2012, for example, “Russia, Ukraine and Belarus attempted to block the adoption of the... outcome...but the nimble COP President gaveled its adoption before appearing to notice Russia’s raised flag.”⁴ While the adoption was left to stand, progress at the next climate change meeting, in June 2013, was limited, as it was “characterized by an agenda dispute concerning a proposal by the Russian Federation, Belarus and Ukraine... underlying the proposal was their dissatisfaction with the decision-making process at the UN Climate Change Conference in Doha in 2012.”⁵

Procedural Justice, Outcomes and Implementation

Researchers tell us that there are several reasons to pursue negotiated outcomes that are reached through procedurally just processes. First of all, these outcomes are more likely to be implemented, even by those participants whose preferences were

not favored in the agreement (Druckman and Wagner, 2019). Furthermore, better joint outcomes have been found to result from processes that are deemed to be more collaborative (Hollander-Blumoff and Tyler 2008; Wagner and Druckman 2012).

Procedural justice influences the level to which negotiators integrate their interests in the outcomes (Hollander-Blumoff and Tyler 2008). Negotiations in processes that are deemed to be just involved more information disclosures, higher joint outcomes, and more Pareto-optimal outcomes, all of which are associated with an orientation toward problem-solving as a negotiation process. Of particular importance are those aspects of PJ referred to as social conduct (fair play and transparency), although, as noted above, the principle of fair representation may be more important in multilateral environmental conferences (Albin and Druckman, 2017). Wagner and Druckman (2012) identify similar results in a study of eleven historical cases of agreements negotiated between governments. When problem-solving processes were used, the outcome was more strongly influenced by the PJ principles. Specifically, more integrative outcomes emerged when problem-solving processes were set in motion by adherence to PJ principles. However, without problem solving, PJ would not lead reliably to integrative outcomes. Moreover, PJ has been shown to set in motion a path that travels to fair outcomes and stable peace agreements (Druckman and Wagner, 2019).

Implications for the relationship between PJ in the negotiation process and effective outcomes comes also from three analyses of multilateral negotiations. More effective outcomes resulted from negotiations in which delegates adhered to PJ principles

⁴ IISD. 2012. Summary of the Doha Climate Change Conference. <http://enb.iisd.org/vol12/enb12567e.html>

⁵ IISD. 2013. Summary of the Bonn Climate Change Conference. <http://enb.iisd.org/vol12/enb12580e.html>



in both trade (Albin and Druckman, 2014) and environmental (including climate change cases) talks (Albin and Druckman, 2017). However, this PJ-effective outcome relationship did not appear in a related study of multilateral arms-control negotiations (Albin and Druckman, 2014a). For this research, effective outcomes were defined in terms of quality of the agreement (issues resolved, degree and type of agreement) and efficiency (time to agreement) of the negotiation process. As might be expected, the PJ impact in the environmental cases was stronger on measures of quality of agreement than on efficiency; there is no shortcut for keeping delegates from around 200 countries informed and engaged in a negotiating process, in order to build trust among the participants. In the trade cases, the impact that the level of distributive justice (DJ) had on the effectiveness of outcomes depended on whether PJ principles were adhered to in the negotiation process. Even when the distributions were equal or equitable, the negotiations led to more effective outcomes only when negotiators adhered to PJ principles.

Conclusion and Recommendations

The evidence reviewed and examples discussed in this policy brief make a strong case for the importance of procedural justice in multilateral environmental negotiations. Negotiating delegations benefit from adhering to these principles – particularly fair representation – during the talks. Practical implications of these findings are captured well by Monheim's (2015) seven prescriptions dealing with information and inclusiveness. A question of interest is how these principles can be implemented during the course of the interactions among many delegations.

Issues of top down (from the Secretariat and Bureau) or bottom up (from the

delegations) implementation and monitoring for adherence loom large. It is likely that some amount of synchronization between administrators and delegates are needed. Administrators set an example and keep tabs on the way delegations communicate with each other. Delegates encourage each other to abide by accepted procedural rules. Contagion dynamics among delegations may establish a conference norm or culture for "proper" behavior. The result would be better, more durable agreements. At the same time, the trade-offs involved with bringing the positions of almost 200 delegates together in a voluntary consensus have to be considered in light of the costs involved in the drawn-out negotiations needed to reach what may be considered as a lowest-common denominator decision.

Finally, there is much still to be learned about the role of justice principles in multilateral negotiations. Although we are confident about the importance of these principles in negotiating complex agreements, we know less about how they evolve and are sustained through the course of weeks, months, or years of conferencing by many delegations discussing many technical issues. Knowledge about these issues would be gained through both case-specific and comparative research strategies. Participant observation, as is performed by the first author of this brief, is one source for insights. Comparative research, as performed by both authors, is a complementary strategy for addressing issues of generality. The aim of both research strategies is to capture the dynamics of conference diplomacy through the lens of justice concepts.

A biographical note on the authors

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