

Fair and Equitable Negotiations? African Influence in Creating the International Access and Benefit-Sharing Regime

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In 2010, parties to the Convention on Biological Diversity (CBD) adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (access and benefit-sharing, or ABS).¹ The adoption of the Nagoya Protocol is the result of a long set of negotiations on the making of an international ABS regime, triggered by a situation of distributive injustice: countries using genetic resources reap most of the benefits, while the costs related to the conservation and protection of these same resources are mainly carried by provider countries. Through the establishment of an international ABS regime, benefits and burdens arising from the use of genetic resources should thus be shared fairly between user countries and provider countries.

Based on principles of distributive justice,² the notion of fair and equitable sharing raises two well-documented issues. First, theories of distributive justice are ill suited to the study of the underlying conditions that shape decisions leading to the distribution of benefits and burdens. These conditions are rooted in the material, social, cultural, and institutional circumstances within which the decision-making process takes place.³ Second, given that different conceptions of morality and justice coexist in society, the conditions of a fair *agreement* tend to be better approached by defining the conditions of a fair *decision-making process*.⁴ The fairness and equity of a benefit-sharing agreement thus depend upon a decision-making procedure that is governed by the principles of procedural justice.

The complexity and interdependence of an ever-growing number of multilateral environmental agreements and the unequal distribution of resources and (bargaining) power among states generates unequal participation opportunities. This article explains how the supposedly most disadvantaged participants manage to influence the decision-making process and the outcome document, thereby tending to procedural justice.

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1. Convention on Biological Diversity. 2010. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

2. Blais 2002.

3. Schlosberg 2007; Young 1990.

4. E.g. Christiano 1996, 2008; Cohen 1986, 1989, 1996; Estlund 1997, 2002.

Analyzing Procedural Justice and Influence

Procedural justice can be considered to exist “when all parties who will be affected by a decision have had a chance to participate in the decision-making process and to influence the final outcome.”⁵ In the context of this paper, we need to clarify two points with regard to this definition. First, as we are dealing with interstate procedural justice, the “affected” parties are those formally associated with the legal sphere of decision (i.e., states).⁶ While we acknowledge the increasing role of non state actors and the importance of intra-state (procedural) justice, these issues are not discussed in this article. Second, we consider procedural justice to be achieved when the process is governed by “fair equality of opportunity,” in line with the Rawlsian principle.⁷ In this article, procedural justice does not entail all parties to exert *equal* influence, nor does it require that their respective interests must be taken into account in an *equal* manner. This article does not claim to determine the winners and losers of the process, but only the conditions under which each party gets a fair chance to influence it. Being less influential than another party does not necessarily mean being not influential enough.

This article uses the African countries’ influence in the ABS negotiations as a proxy to analyze the conditions promoting a fair share of influence. As African nations are among the most disadvantaged in the world, one can reasonably expect them to represent a lowest common denominator in terms of participation and influence.⁸ While the relationship between influence and justice is complex (and goes beyond the scope of this article), we argue that if African countries can influence the process, all other parties are at least equally capable of doing so as well, thus pointing towards procedural justice.

Taking the above into account, how do we measure influence? According to Arts and Verschuren, influence is “the achievement of (a part of) an actor’s goal in political decision-making, which is either caused by one’s own intervention or by the decision-makers’ anticipation.”⁹

This definition offers a double advantage. First, it goes beyond the traditional interactionist approach of influence (i.e., actor X influences actor Y). What we are looking for is whether African countries had influence on the negotiation process and its results, rather than on the specific behavior of other players.

Second, it takes into account the notion of anticipation, which is crucial since the classical resources for power (pressure, coercion, threat) are likely to be absent in the case of African participation. The presence of an actor may be sufficient to exert

5. Clayton 1998.

6. For a broader description and justification of the substitution of the all-affected principle by the subject-to-the-law principle, see Beckman 2004; Karlsson 2006.

7. Rawls 1971, 47 (revised edition). Fair equality of opportunity requires that offices and positions are distributed on the basis of merit, and that all have reasonable opportunity to acquire the skills on the basis of which merit is assessed.

8. Anand 2004; Gupta 2006.

9. Arts and Verschuren 1999.

influence, as are his or her thoughts and ideas.¹⁰The definition aligns with Zimmerling's description of influence as one's capacity to frame the debate on what is and what ought to be, or, in other words, on normative issues.¹¹

Using the above definition, we mobilize different methodological frameworks on participation and influence to assemble a new framework. The resources that parties possess during the decision-making process are susceptible to causing unbalanced participation. Hence, we use Shue's concept of background justice and Fisher and Green's indicators to describe the resources African countries possessed during ABS negotiations at the CBD.¹²More particularly, we address three key indicators: delegation size, illustrating the discrepancy of human and financial resources between the negotiating parties; the experience of the African delegations, measured by the consistency of their attendance at ABS meetings since 2001; and the characteristics of the political system, which give a hint of the stability and the level of political inclusion.

While these indicators allow us to take stock of the starting position of African countries, they do not provide information on countries' actual influence. We thus analyze the goal attainment of African countries, considered by Corell and Betsill as the most significant factor for assessing the level of influence of participants in international environmental negotiations.¹³The first dimension of goal attainment refers to effects on the negotiation outcome, reflected by the extent to which African positions and priorities are taken onboard in the final text. To avoid incomplete representation of influence, Corell and Betsill also suggest taking into account the effects on the negotiation process itself: whether or not the actor is recognized and its arguments are heard by negotiation partners. As one interviewee stated: "our first priority was to have the opportunity to express our views on equal footing with representatives of developed countries."¹⁴

As our research reveals asymmetries between the starting point of African countries and their actual influence, we trace the negotiation process to envisage the sources of this influence. We therefore combine Betzold's influence measurement framework with insights from contemporary deliberative theory.¹⁵

Betzold distinguishes four possible procedural strategies through which disadvantaged states successfully exert influence. The *normative strategy* is the establishment of political but also moral and symbolic leadership through which states make themselves legitimate negotiation partners.¹⁶ The *liaison strategy* makes use of the power and expertise offered by third-parties such as knowledge networks and international non state actors (NSAs). The *target-based strategy* seeks common interests with (stronger) negotiation partners to enforce one's priorities. The *process-based strategy* reflects the

10.Arts and Verschuren 1999.

11. Zimmerling 2005

12. Shue 1992;Fisher and Green 2004.

13. Betsill and Corell 2001; Corell and Betsill 2001.

14. Comorian delegate, June 30, 2011 (Interview 8).

15. Betzold 2010.

16. Ibid; Wallbott 2014.

skills with which a party uses the procedural rules as leverage for influence and power.¹⁷

These different inputs allow for the creation of the framework illustrated in Table 1. Following Arts and Verschuren's method for data-collection in complex decision-making,¹⁸ we acquired data for this article through fourteen semi-structured interviews, primary sources, and secondary literature. This allowed combining perspectives from both African and non-African delegates (EU delegates and intergovernmental organization representatives), as well as comparing them to raw data and third-party analysis.

Table 1. Research Framework

Variables	Resources for Participation	Goal Attainment & Recognition	Sources of Influence
Indicators	• Human resources • Delegation experience • Characteristics of the political system	• Outcome • Process	• Normative strategy • Liaison strategy • Target-based strategy • Process-based strategy
Source	Fisher and Green 2004	Corell and Betsill 2001	Betzold 2010

Africa and the Global Governance of Genetic Resources

ABS was put on the international agenda with the adoption of the CBD in 1992 and its third objective of fair and equitable sharing of the benefits arising from the utilization of genetic resources.¹⁹ However, it was only in 2000 that the Ad Hoc Open-ended Working Group on ABS (WGABS) was created, which led to the adoption of the Bonn Guidelines, a non-binding document aimed at assisting parties in developing an ABS regime.²⁰ The slow pace of negotiations triggered a call for action at the 2002 World Summit on Sustainable Development in Johannesburg, and an ensuing mandate in 2004 for the

17. Betzold 2010.

18. Arts and Verschuren 1999. Unlike the authors, however, we did not rely on ordinal quantification of the different indicators.

19. Broggiato et al. forthcoming 2015.

20. Blais 2002.

WGABS to negotiate an international regime implementing the ABS provisions of the CBD. These efforts eventually resulted in the adoption of the Nagoya Protocol.²¹

From the start, African countries have been very active in ABS discussions. Africa has a lot at stake when it comes to biodiversity and genetic resources, as the physical and cultural subsistence of numerous rural communities on the continent heavily depend upon natural resources and associated traditional knowledge.²² The continent is also a major provider of genetic resources, as it hosts an important part of the world's biodiversity hotspots.²³ African countries were thus prompt protagonists of an international ABS regime, as testified by the early adoption in 2000 of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources.²⁴ Despite their central position in the functioning of a future global ABS regime, the participation of African countries has often been overlooked in recent work on global environmental politics.

An Unfair Participation Process?

Unequal Starting Points

The number of delegates present during global environmental negotiations provides a first indicator of “practical” procedural equity, even if the size of the delegation does not by itself guarantee effective and efficient participation.²⁵ Nonetheless, the complexity of the subjects, the numerous parallel sessions, and the large amount of information to analyze logically favors bigger delegations.²⁶ In this regard, the analysis of the different delegation sizes illustrates an important capacity gap. Figure 1 shows trends in average delegation sizes by three groups of countries since the start of the negotiations on ABS in 2001.²⁷ Delegations of African countries during the WGABS show a steady trend, with half the countries represented by only a single delegate. In comparison, during these same meetings, the BRICS (Brazil, Russia, India, China, and South Africa) had, on average, 8.9 delegates, while the EU member states brought 3.8 members.

While the gap at COP10 decreased, the EU and BRICS still had respectively two and four times the number of on-site African delegates. The figures of participation also reveal an important gap in the consistency of attendance of the national delegations: only 11 percent of African countries were represented during all sessions of the WGABS (compared to 29 percent for the EU and 80 percent for the BRICS). At the beginning of the ABS negotiations, this also translated into lower capacity of African countries to

21. Chiarolla 2010.

22. CBD 2010.

23. UNEP 2010.

24. Munyi and Jonas 2013.

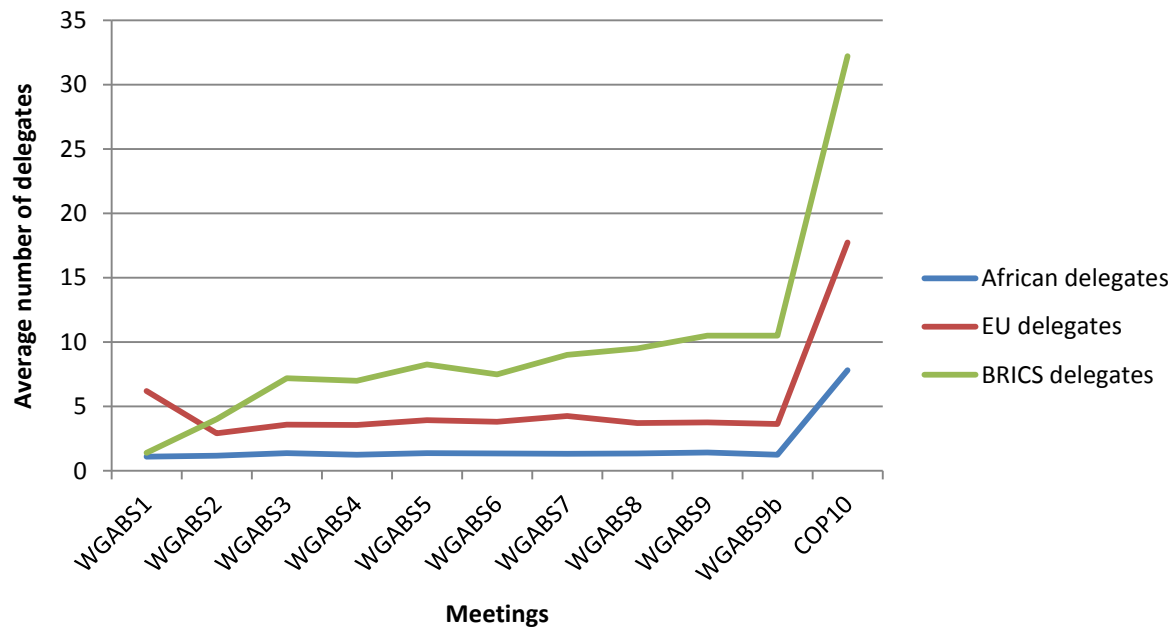
25. Depledge 2006.

26. Schroeder et al. 2012; Yamin and Depledge 2004.

27. All figures based on the list of registered participants of the WGABS and COP10.

ensure submissions of their positions to the CBD secretariat. Before 2008 “only a handful of individual statements of African states had been recorded.”²⁸

Figure 1. Change in Average Size of National Delegations to WGABS/COP10



As underscored by African delegates at COP10, this discrepancy affected the delegations’ capacity to analyze the negotiation documents in time, decide whether the texts were acceptable for them, and propose alternatives.²⁹ Moreover, the numbers of African delegates present throughout the ABS meetings mirror the evolution of delegation sizes in other environmental regimes.³⁰ This asymmetry reflects a long-lasting structural problem in the representation of developing states at the UN.³¹

The capacity problem of developing countries’ delegations is further exacerbated by the characteristics of their political systems. The type of political system, the openness of the system, and its stability play key roles in the way countries (are able to) organize their foreign policy.³² Weak levels of democratic development and high political instability not only undermine a country’s internal reflexive and epistemic resources—and thus its effective capacity to participate in the negotiation process, it also weakens credibility and legitimacy. When compared on a global scale through democracy indexes, notwithstanding a few exceptions, African countries are the most unstable countries and

28. Wallbott 2014, 117.

29. Nijar 2011a.

30. Schroeder et al. 2012.

31. Keohane 1966.

32. Milner 1997; Risse-Kappen 1991; Rosenau 1971.

have the weakest level of democratic development.³³Sometimes described as “quasi states,” African countries also have limited capacity to prioritize multilateral processes in general, and the CBD in particular.³⁴

The Effects of African Influence

Looking only at the background injustice between participants, one could expect African countries to have had little influence on the ABS negotiations and the content of the final agreement. Analyzing this requires looking at the content of the agreement and at the negotiation process.

Three types of demands were highlighted by African countries in the discussions on ABS.³⁵ The first concerned the legal nature of the future official agreement. African countries suggested that it include effective compliance mechanisms such as checkpoints for monitoring the utilization of genetic resource and measures for dispute resolutions.³⁶Second, African countries advocated that the Protocol have broader scope, whether it be in economic, spatial, or temporal terms. African delegations asked that it cover both genetic resources and their derivatives,³⁷as the overwhelming majority of substances derived from genetic resources are semi-synthetic products containing no genetic material.³⁸ In 2010, delegations suggested that the Protocol cover genetic resources found outside the geographic boundaries of states, for which the sharing of benefits is managed by a global multilateral mechanism.³⁹Delegations also advocated that the Protocol include genetic resources that were accessed before the Protocol’s entry into force.⁴⁰ Third, African countries advocated for the recognition of their specific political and economic status. Given the importance of indigenous and local communities (ILCs) and their knowledge in Africa, nations called for a genuine recognition of these people and their traditions by the Protocol. Finally, African

33. Based on figures from *Manning the Barricades: Who's at Risk as Deepening Economic Distress Foments Social Unrest?* London: Economist Intelligence Unit, March 2009; and *Democracy index 2010. Democracy in Retreat.* London: Economist Intelligence Unit, 2010.

34. Jackson 1990; Sørensen 2001; Young 1989.

35. Delegate from the Democratic Republic of the Congo, May 19, 2011 (Interview 4); Ugandan delegate, June 20, 2011 (Interview 7); Comorian delegate, June 30, 2011 (Interview 8); ENB staff member, June 24, 2011 (Interview 9); EU delegate, June 27, 2011 (Interview 10); Malagasy delegate, July 1, 2011 (Interview 11); Zambian delegate, June 24, 2011 (Interview 12); Nigerian delegate, June 24, 2011 (Interview 13). See also Wallbott, Wolf and Pozarowska 2014.

36. Earth Negotiation Bulletin staff member, June 24, 2011 (Interview 9); EU delegate, June 27, 2011 (Interview 10). See also Ling 2010.

37. Zambian delegate, June 24, 2011 (Interview 12).

38. ten Kate and Laird 1999.

39. Earth Negotiation Bulletin staff member, June 24, 2011 (Interview 9); Nigerian delegate, June 24, 2011 (Interview 13). See also Wallbott, Wolf, and Pozarowska 2014; Buck and Hamilton 2011.

40. Ling 2010.

countries sustained that without additional financial resources and transfer of technology, it would be impossible for them to set up the necessary political and legal structures allowing for access to their genetic resources.

Comparing African claims with the final text presents a surprisingly mixed picture. While the Nagoya Protocol is a “masterpiece in creative ambiguity” and African claims are often found in a diluted version of their original version, it appears that their demands found a significant echo in the final text.⁴¹ Directly or indirectly, the three types of African demands can be found in the Nagoya Protocol.

First, it requires parties to establish a legal, administrative, or policy framework for the exchange of genetic resources and benefits arising from their utilization. Despite the lack of details concerning such a framework,⁴² and the apparent contrast between the rather detailed list of obligations for provider countries and those for user countries,⁴³ the text obliges the latter to take measures to ensure that bioprospectors have a prior informed consent for access to genetic resources (if required by the former), as well as a mandatory benefit-sharing agreement. They must also provide the opportunity to settle legal disputes concerning the terms of this agreement and set up a series of “effective” checkpoints monitoring the utilization of genetic resources.⁴⁴ Unfortunately, no criteria have been defined to establish appropriate measures for non-compliance.

The fundamental question of economic scope was solved by broadening the term “utilization of genetic resources” to cover derivatives and thus include benefit-sharing for their utilization.⁴⁵ The establishment of a global multilateral benefit-sharing mechanism, one of the key African demands (but opposed by Northern countries) is addressed by Article 10 of the Nagoya Protocol. The inclusion of this article has played a key role in the adoption of the Protocol by African countries.⁴⁶ Although the Nagoya Protocol does not make any reference to the temporal scope of the agreement, the relatively broad scope of Article 10 is seen by some as an opportunity to redress this omission. As it covers the benefits arising from genetic resources, for which it is not possible to grant or obtain prior informed consent, it “could potentially be used to address benefit-sharing for pre-Protocol accessions.”⁴⁷

As for the third demand: numerous references to ILCs exist in the text. Eight of the twenty-seven points of the preamble and thirteen of the thirty-six articles recall their role, recognize their rights, and/or call for respecting traditional knowledge. It could thus be said that “the Nagoya Protocol goes beyond the CBD” regarding traditional

41. Earth Negotiations Bulletin, November 1, 2010.

42. Belgian delegate, June 21, 2011 (Interview 6).

43. De Jonge 2011; Nijar 2011b.

44. Nagoya Protocol, article 17.

45. Kamau, Fedder, and Winter 2010.

46. Nigerien delegate, June 24, 2011 (Interview 13).

47. Buck and Hamilton 2011, 57.

knowledge held by ILCs, a position primarily defended by the African countries throughout the ABS process.⁴⁸

As a delegate of the European Commission acknowledged, “African countries were very effective in coordinating their group and making strategic choices.”⁴⁹ This growing recognition culminated by the end of the negotiations in Nagoya, where Namibia (the chair of African Group) joined the EU, Norway, and Brazil in a “friends of the chair” group convened by the Japanese presidency. While the African presence in this meeting can be explained by different (probably complementary) interpretations, it does point to a significant influence on the process. Having the African countries on board represented major leverage to get the shaky draft accepted by other developing countries and securing a positive outcome in Nagoya. The approval by African countries triggered consensus on the Protocol in the final days of the negotiations.⁵⁰ This is further confirmed by an interviewee, who stated that “the African group came to be often solicited on its positioning regarding important issues” and was recognized as being among the most specifically concerned players in the negotiations.⁵¹

Observations

The above assessments require two additional observations. The first relates to the assessment methodology itself, as the analyzed outputs must be treated cautiously. The fact that some of the African objectives were not fully taken into consideration is quite obvious: a consensus-based decision-making process requires each actor to concede ground. Second, analyzing the discrepancy between the public objectives proclaimed by African countries and the actual effects on outcome and process does not itself give a precise idea of the level of fairness of the negotiation process.

Moreover, while African participation points to a certain level of influence, in terms of fairness the negotiation outcome certainly did not satisfy the African parties’ objectives. As Joseph states, “developing countries are nowhere near where[they] wanted to be.”⁵² This result could easily be explained by stating that African countries were overwhelmed by the political and technical expertise of more powerful negotiation actors, such as the EU and Brazil. However, it is unlikely that African countries would have had any influence if the negotiations were only a matter of power and balance. Various factors contribute to understanding how African countries influenced key objectives of the Nagoya Protocol.

48. Wallbott, Wolf, and Pozarowska 2014.

49. EU delegate, May 3, 2011 (Interview 1).

50. Nijar 2011a.

51. Nigerien delegate, June 24, 2011 (Interview 13); Ling 2010.

52. Joseph 2010.

Analyzing Factors of Procedural Justice in the ABS Negotiations: Four Possible Strategies

Normative Strategy: The Civilizing Force of Hypocrisy

Three substantial arguments were used by African countries to reinforce their influence in the ABS negotiations. First, whenever possible, they put the ethical rationale of the third objective of the Convention (fair and equitable sharing of benefits) in the limelight.⁵³ The sharing of benefits stems from “the moral duty of developed countries,” not only for present use but also for the historical use of genetic material.⁵⁴ This argument was based on the “beneficiary pays” principle: the fairest way to rectify the unequal distribution of costs and benefits related to the utilization of genetic resources “is to assign the moral responsibility to deal with the problems caused by historic [use] to the agents who have benefited from it.”⁵⁵ Second, in line with the historic position of developing countries at the CBD, African countries stressed the importance of sovereign control over their resources. ABS had to go along with an enforcement of sovereignty as well as effective compliance mechanisms, as failing to do so was portrayed as allowing Northern biotechnology companies to continue their activities of biopiracy, violating the sovereignty of provider countries.⁵⁶ The third argument referred to the economic, environmental, and cultural importance of biodiversity for African populations. Letting biodiversity erode would further exacerbate subsistence problems. This, however, was used with greater parsimony, with some countries being wary that new strict environmental regulation could be used to hinder their development.⁵⁷

While being of different normative natures, these three arguments managed to replace the technical and instrumental dimension of the ABS discussion with the following question: which principles should the ABS negotiations strive for? In doing so, this strategy allowed African countries to exert influence by using public normative argumentation, despite the reality of the power balance and the existence of well identified partisan interests.⁵⁸ Their normative leadership contributed to the creation of a common narrative on ABS among the negotiators.⁵⁹ Whether based on morality, fairness, and/or legitimacy, this strategy also allowed for the promotion of a deliberative approach to the ABS negotiations, thereby avoiding a pure North–South bargain. The African countries’ argument suggested that the utilization of genetic resources cannot be

53. Zambian delegate, June 24, 2011 (Interview 12); Malagasy delegate, July 1, 2011 (Interview 11).

54. Delegate from the Democratic Republic of the Congo, May 19, 2011 (Interview 4); See also, e.g., the position of the African Group on the temporal scope of the Protocol, as relayed by the Earth Negotiation Bulletin on Tuesday October 26, 2010.

55. Weijers et al. 2010.

56. Ling 2010.

57. African UNEP project manager, May 12, 2011 (Interview 3).

58. Mansbridge et al. 2010.

59. Czarniawska 1997; Wallbott 2014.

treated as a mere tradable commodity upon which two actors can bargain, but involves a greater dimension of justice, morality, and legitimacy. Through normative argumentation, African countries thus used the “civilizing force of hypocrisy” to put forward their own self-interested prerogatives.⁶⁰

Liaison Strategy: The Limits of Governance Conceived as Collective Learning

A normative strategy alone is not sufficient for producing effective epistemic input in the negotiation process; also required are a more informed debate, a better balance of the available expertise, and a greater transparency of the lobbying dynamics. The quality of epistemic input allows giving a concrete translation—or instead, imposing a political gridlock—to the arguments supposedly accepted by all the parties. This may be achieved with an effective liaison strategy.⁶¹

One of the main challenges for the African countries was to counterbalance their deficit in terms of expertise and negotiation narrative by establishing or integrating networks and epistemic communities, which are “networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area.”⁶² These communities, by encompassing various institutions that set up and organize the collective discussion, promote the emergence of an embryonic deliberative system at the international level. The communities help equalize the expertise of the actors,⁶³ fuel the argumentation process,⁶⁴ and favor the collective recognition of interests.⁶⁵ Participating in these networks thus provides delegations with various tools to get a grasp of the political debate and build up “deliberative capacity.”⁶⁶

Two types of networks interest us in this context: pre-Nagoya epistemic communities/networks, such as the ABS Capacity Development Initiative, and the support by NSAs during the final negotiations in Nagoya. The Dutch and German-led ABS initiative was launched in 2005, following a request from African negotiators during WGABS3. It gave birth to the creation of pan-African cooperation on ABS, which contributed not only to building African knowledge on ABS,⁶⁷ but also allowed defending a coherent and common African position in the different international fora covering ABS issues.⁶⁸ Examples of this include the 2006 ABS Vision for Africa, the Central Africa

60. Elster 1994, 1995.

61. Orsini 2013.

62. Haas 1992.

63. Christiano 1996; Habermas 1992.

64. Mansbridge et al. 2012.

65. Mansbridge 2006; Mansbridge et al., 2010.

66. Dryzek 2009; see also Cohen and Sabel 1997 proposing a “direct deliberative polyarchic” perspective.

67. Wallbott 2014.

68. Munyi and Jonas 2013.

Forest Commission (COMIFAC) ABS Strategy, commissioned in 2007,⁶⁹ and the current development of African Union Guidelines for a coordinated implementation of the Nagoya Protocol.⁷⁰

During the final negotiations in Nagoya, the cooperation between African delegations and NSAs seemed fruitful. The opinions expressed in the various interviews with African delegates ranged from “very good relationship” to “including representatives of civil society and NGOs in the delegation has always been a strong point in our country.”⁷¹ Some African delegations were indeed “examples for the inclusion of NSAs in their delegations.”⁷² However, behind the scenes the situation was more nuanced. When looking at the composition of the delegations, most of the invited NSAs were national actors not necessarily related to a larger, more influential international parent organization.⁷³ Several interviewees were also openly cautious about using NSA expertise as a strategy. As one interviewee stated: “under no circumstances would we have made use of resources provided by NGOs during the conference.”⁷⁴ Several interviewees feared that NSAs would abuse developing countries’ right to speak to strengthen their own positions, rather than help them gain influence.⁷⁵ Finally, several delegates stressed the inconstant nature of NGO support, with only a few international NGOs still actively supporting developing countries’ delegations by the end of the negotiations.⁷⁶

The effect of the liaison strategy is thus double-edged. While the capacity of delegates may have increased through active engagement with pre-Nagoya epistemic communities, the support provided by NGOs during the final negotiations may not have been regular and steady enough to guarantee an effective strengthening of African capacity during the negotiations. This shows that creating epistemic communities, capacity building platforms, and/or NGO networks is not sufficient to equalize the background conditions between the parties. Although they may reinforce capacity, research has shown that these networks often fail to fully address the knowledge gaps

69. COMIFAC 2010.

70. ABS Initiative, no date.

71. Comorian delegate, June 30, 2011 (Interview 8); Malagasy delegate, July 1, 2011 (Interview 11).

72. EU delegate, May 3, 2011 (Interview 1); Comorian delegate, June 30, 2011 (Interview 8).

73. Based on the list of registered participants of the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity.

74. Delegate from the Democratic Republic of the Congo, May 19, 2011 (Interview 4).

75. EU delegate, May 3, 2011 (Interview 1); African UN liaison officer of the Rio Conventions, 11 May 2011 (Interview 2); delegate from the Democratic Republic of the Congo, May 19, 2011 (Interview 4).

76. Delegate from the Democratic Republic of the Congo, May 19, 2011 (Interview 4); Belgian delegate, June 21, 2011 (Interview 6); Earth Negotiation Bulletin staff member, June 24, 2011 (Interview 9); EU delegate, June 27, 2011 (Interview 10).

and diverging priorities between more powerful and weaker actors.⁷⁷ Transforming the information resources available in civil society networks requires possessing a range of social resources, technical expertise, and logistics that African delegations did not hold individually.

Target and Process-Based Strategies: The Effectiveness of Pooled Resources

African countries considered another way to optimize their chances to influence the negotiation process: using the formal voting and procedural rights they enjoyed to reclaim power within the negotiations. The principle of “one state, one vote” was no longer taken as an aggregative factor of equality but as a strategic tool to build alliances and acquire leadership positions.

Having a voice as a party means this voice can be used both during the negotiations and within the various regional and economic groups of countries. African countries organized within the African Group, the largest regional group in terms of membership, pooled resources and information from its numerous members, as well as within many different regional and interest groups.⁷⁸ Because of this structure, 40 percent of the G77, four members of the Like-Minded Mega-Diverse Countries, 70 percent of the Least Developed Countries group, and one member of the BRICS, are African countries. Interviewees testified about the ambition to create a common position and coalition-building strategy within the African Group, so as to speak with one voice in the different bodies in which they had membership.⁷⁹ The target-based strategy functioned as a voice multiplier: the group could express itself through its own regional entity and through all the other interest groups its members were part of, in most of which it represented a majority. The group’s relation with other developing countries was therefore central to its influence in the ABS negotiations.⁸⁰ The advantages of such a strategy could have been destroyed by the background asymmetries that African delegations faced individually: dispatching a member to the different interest groups may mean losing one member of an already scarce delegation. However, pooling (human) resources solved this issue. Together, African countries were no longer characterized by poorly staffed delegations but by the group’s 398 delegates, able to compete with the biggest regional and interest groups in the room.

This strength, combined with the multiplication of memberships, was used to establish a very effective linkage strategy.⁸¹ Assuming that user countries were prepared to go to great lengths to ensure easy access to genetic resources for their biotechnology industry,

77. Gutman 1994; Karlsson 2002.

78. Comorian delegate, June 30, 2011 (Interview 8); Malagasy delegate, July 1, 2011 (Interview 11).

79. Malagasy delegate, July 1, 2011 (Interview 11); Nigerian delegate, June 24, 2011 (Interview 13); Zambian delegate, June 24, 2011 (Interview 12).

80. Wallbott, Wolf, and Pozarowska 2014.

81. Wallbott, Wolf, and Pozarowska 2014.

the African Group linked environmental protection to the right to development, to the necessity of international equity, and to the provision of financial support.⁸² African countries insisted on the fact that “unless a breakthrough on ABS was achieved and was accompanied by substantive funding-related decisions, there would be no agreement on either the Strategic Plan [an overarching framework for action on biodiversity in the entire UN system], or the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.”⁸³

By linking the topics, the African Group not only invoked its opponents’ self-interests, but also used the possibility of a failure of the negotiations as leverage for power. Setting up an efficient target and process-based strategy gave African countries the occasion to stage an explicit threat (e.g., the boycott) as a - possibly self-fulfilling - warning, whose resolution was independent of the group’s own will.⁸⁴ In other words, the success or failure of the negotiation was not reliant on the group’s action but on the willingness of its negotiation partners to secure a deal in Nagoya. In doing so, the group strengthened its credibility and reinforced the normative force of its arguments,⁸⁵ thereby forcing user countries to close a deal on ABS to which they were mostly reluctant.⁸⁶

Finally, it could be argued that the effective use of the target and process-based strategies has contributed to the inclusion of Namibia in the “friends of the chair” group. This privileged access was an unexpected occasion for the African Group to transfer its demands and priorities from the general public space to this “empowered deliberative space” of the negotiation process.⁸⁷

What ABS Negotiations Tell Us About International Procedural Justice

By using the case of participation of the African countries in the negotiations of the Nagoya Protocol, we have shed light on how the most disadvantaged countries manage to exert influence during long-lasting multilateral negotiations and have their priorities recognized in the final text (albeit in a diluted version and with no guarantee of effectiveness). We put into perspective some commonly established points on multilateral deliberation and international public governance. First, departing from rational choice approaches of political decision,⁸⁸ we stress the effective force of normative argumentation and political publicity for the fairness of the process leading to a political decision. Our research shows that a public discussion between formally equal

82. EU delegate, June 27, 2011 (Interview 10).

83. Earth Negotiations Bulletin, November 1, 2010.

84. On the nuances between a threat and a warning, see Nozick 1969, 453-458; Schelling 1960, 35 and 123.

85. On the decisive advantage of transforming or rephrasing a threat as a warning, see Elster 1995.

86. Aubertin and Filoche 2011.

87. Dryzek 2009; Orsini and Compagnon 2013.

88. Goldstein and Keohane 1993; Hasenclever, Mayer, and Rittberger 1997.

parties, when driven by arguments of public interest, may help valorize the interests of the most disadvantaged parties. Even when driven by self-interested objectives, an actor's position is better accepted if it fits with public reason arguments.⁸⁹ During ABS discussions, African countries defended their proposals by referring to considerations recognized by others as having normative force. Our article thus contributes to previous research pointing to the use of normative argumentation in multilateral environmental negotiations as a strategy to alter the way in which parties define, frame, and understand what is and what ought to be.⁹⁰

We also put forward the contrasted role that expertise networks play during the negotiations. While including African countries within epistemic communities has allowed them to increase expertise and build alliances, the influence of these networks should not be overestimated. Although deliberative capacity can be enhanced through collective learning communities and/or platforms, a network-based governance process does not by itself suppress the background inequalities between the parties. These background inequalities undermine both the epistemic quality and the formally inclusive nature of the decision-making process. The ABS negotiations show that the democratic role played by expertise is jeopardized if background conditions are not balanced and/or formal equality of the parties is not guaranteed.

Also, we spotlighted the fundamental role formal equality played in target and process-based negotiation strategies. On its own, formal equality is inefficient at tackling the resource inequalities and closing the capacity gap between the parties, even though it is often brandished as a banner by the most disenfranchised parties. However, in this article we show that formally equal representation may be used both as a voice multiplier and as effective control leverage in the negotiations. At the CBD, the principle of "one country, one vote" became a weapon for entering empowered places of deliberation, building alliances, solidifying warning strategies, and conquering leadership positions, allowing for normative leadership and discursive capacity to be built through networking strategies to develop to full potential. In this respect, it should be noted that while African countries may have influenced ABS discussions at the CBD, it only represents one of the many components of international ABS negotiations. For African influence to reach full extent in the ABS debate, other ABS-related *fora* such as WIPO, the FAO or the WTO will need to provide for similar conditions of participation as the CBD. We are wide of the mark.

89.Elster 1994, 1995, 1998.

90. For seminal sources see Mansbridge 1992; Risse 2000. For applications in the field of global environmental politics see Betzold 2010; Wallbott 2014.

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