

Equity and power in the UNFCCC process: an empirical study

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I. Introduction

Dworkin postulated that law emerges from, rather than stands above, the distribution of socio-economic power within a society. The formation of international environmental law at the United Nations Framework Convention on Climate Change (UNFCCC) is perhaps the archetype of this theory. As a result of the huge national interests at stake, global geopolitics and patterns of imperialism and oppression dominate the negotiations, but more concerning, however, is that they are also embedded in the very structure of the UNFCCC procedure, which replicates and reinforces these wider structural oppressions.

The concept of equity plays a crucial role in the negotiations: a key and consistent stumbling block in the talks is the argument over how responsibility for climate change mitigation should be differentiated between developed and developing countries. In essence, developed countries carry much more historic responsibility for carbon pollution, yet will be less affected by the impacts of climate change than developing countries. Yet equity, or rather lack of equity, also influences the negotiations themselves through very real effects on representation and participation. Voices from the most vulnerable and least responsible countries are repeatedly tokenised and marginalised, whereas developed countries face no such difficulties. Climate change cannot be divorced from issues of poverty, inequality and oppression. This paper will examine the very concrete ways in which this occurs, and argues that in order to have a chance of an equitable outcome in the negotiations, these issues must be addressed.

II. Representation and delegation size

At the most basic level, the sheer cost of being at the annual Conference of the Parties (COP) presents a major barrier to access for many countries: travel, accommodation and the cost of living all add up. Some countries can afford to send huge delegations, whereas some countries send only a few negotiators. The level of representation in no way reflects the country's population size, level of vulnerability to climate impacts, or level of capacity. Instead, it reflects who has power and wealth, and who does not.

This has major impacts on the negotiations. Because the talks proceed in many different workstreams simultaneously, only countries with large delegations can adequately follow them all. In addition, towards the end of

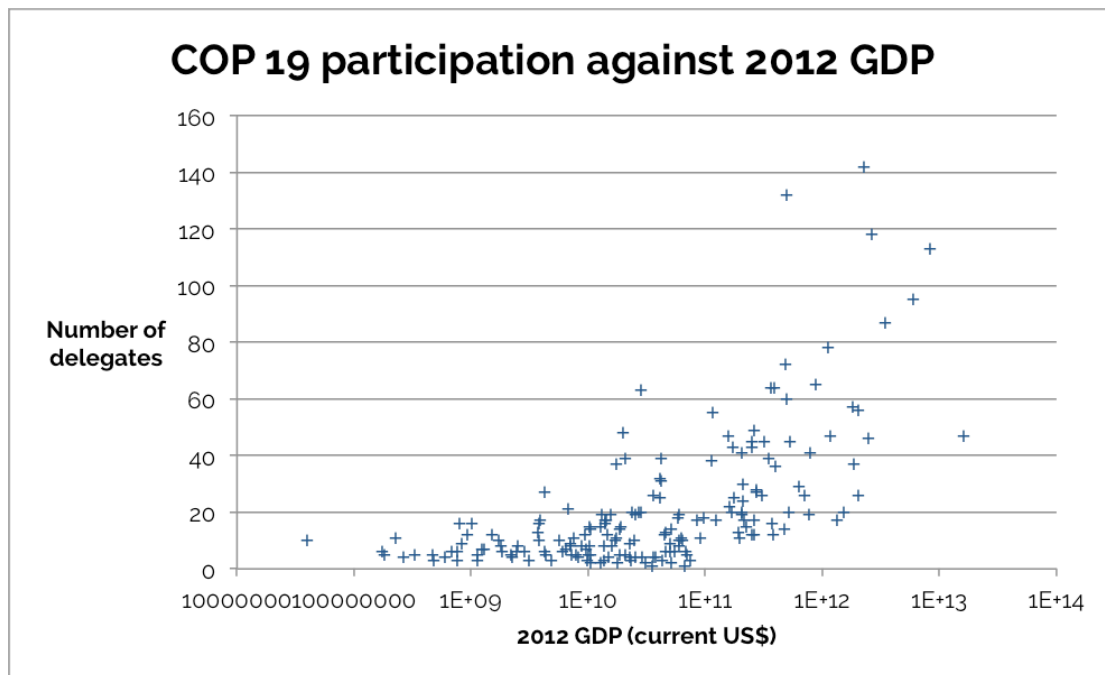
the conference the talks usually continue late into the night, meaning that larger delegations can work on a relay system but smaller delegations will have to take a rest at some point and therefore miss the proceedings. The smaller the delegation, the less likely it is that there will be a collective understanding of the entire process. Delegation size is a key factor determining how effective a negotiating team will be at representing their country's interests. It's not the deciding factor – skill, knowledge, resources, and team dynamics all play a role – but it's quite significant.

An Ethiopian NGO representative, on a party badge rather than an observer badge, said to me that because his government cannot afford to send enough negotiators, NGOs partner with the government to support the negotiators on issues where they have limited expertise. Even New Zealand has single negotiators tasked with covering multiple simultaneous negotiating streams. Incredibly, some states only have a single negotiator here, rendering it impossible for them to adequately cover the negotiations.

Schroeder et al, who tracked this issue, found that over time small developing countries have consistently downsized their delegations to COPs, whereas G8 and BASIC countries have increased their own delegations, with the exception of the United States, who after withdrawing from the Kyoto Protocol started to send fewer delegates to COPs. The researchers stated that "[t]his 'capacity gap' – only partly mitigated through assistance from non-state actors (NSAs) such as the Climate Action Network – limits poor countries' negotiating power and makes their participation in each session less effective."¹ The researchers recommended that moving forward countries consider capping national delegations at a level that allows broad representation across government departments and sectors of society while maintaining manageable overall size.

I have carried out data analysis on the available statistics as to the size of party delegations at COP. When comparing the size of parties' delegations to COP 19 against their GDP in 2012, I gained the following results.

¹ Heike Schroeder, Maxwell T Boykoff & Laura Spiers "Equity and state representations in climate negotiations" *Nature Climate Change* 2 834-836 (2012) at 834.



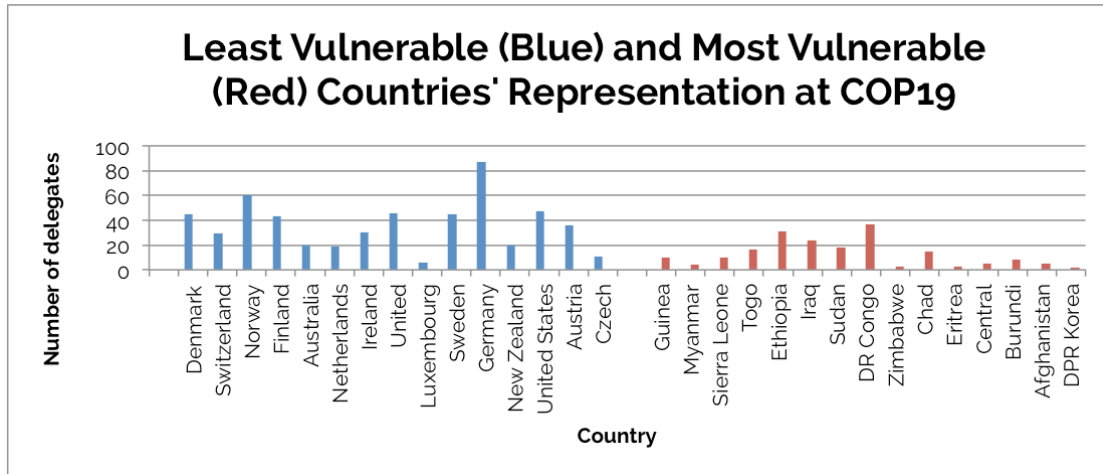
As can be seen, party delegation size is roughly proportional to GDP, proving that in general countries with more wealth and capacity send larger delegations.

I then analysed the representation of parties as compared to their climate vulnerability, using the ND-Gain climate vulnerability index.² The ND-Gain Index is a system which summarises a country's vulnerability to climate change in combination with its readiness to improve resilience. It serves as an overall measure of a country's vulnerability to climate-related hazards and its readiness to adapt to the challenges posed by climate change and other global forces.³ Vulnerability is defined as the degree to which a system is "susceptible to, and unable to cope with, adverse effects of climate change", including three components: exposure (the climate stress faced by a system or individual), sensitivity (the extent to which a sector within a country will be affected by or responsive to climate exposure), and adaptive capacity (the degree to which a country is able to cope with or respond to the exposed and susceptible stresses. Readiness is defined as the ability of a country's private and public sectors to absorb financial resources and mobilize them efficiently to reduce climate change

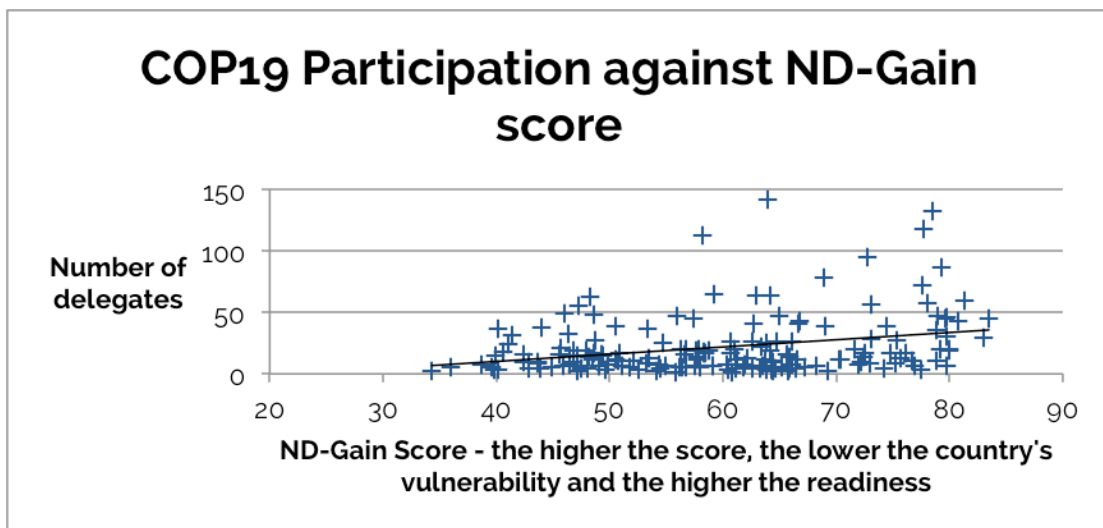
² ND-Gain Index, www.index.gain.org, accessed 13 December 2014.

³ <http://www3.nd.edu/~nchawla/overview.pdf>

vulnerability; this takes into account economic, governance and social factors.⁴



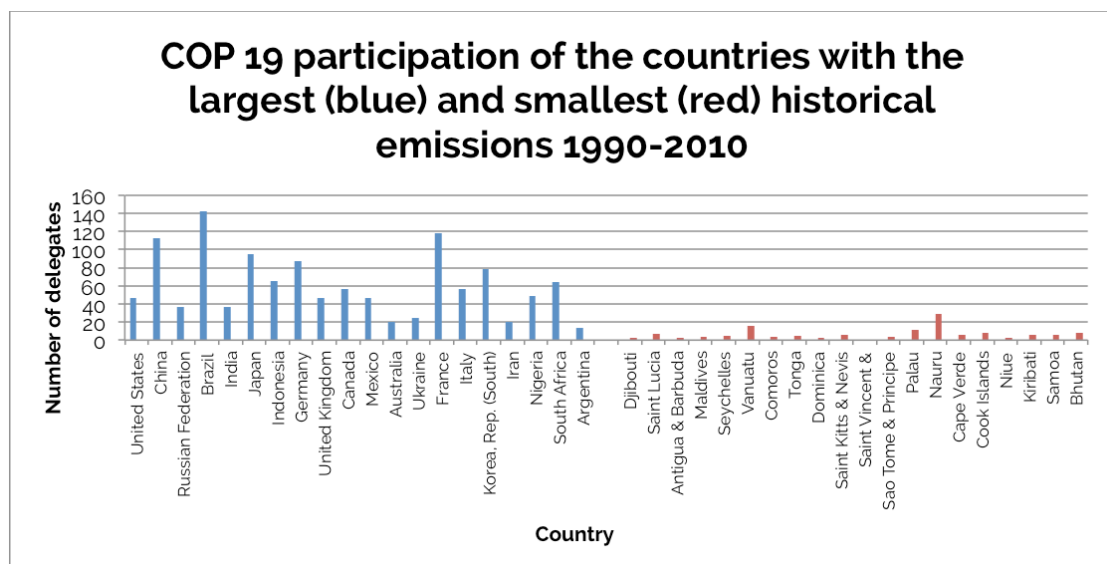
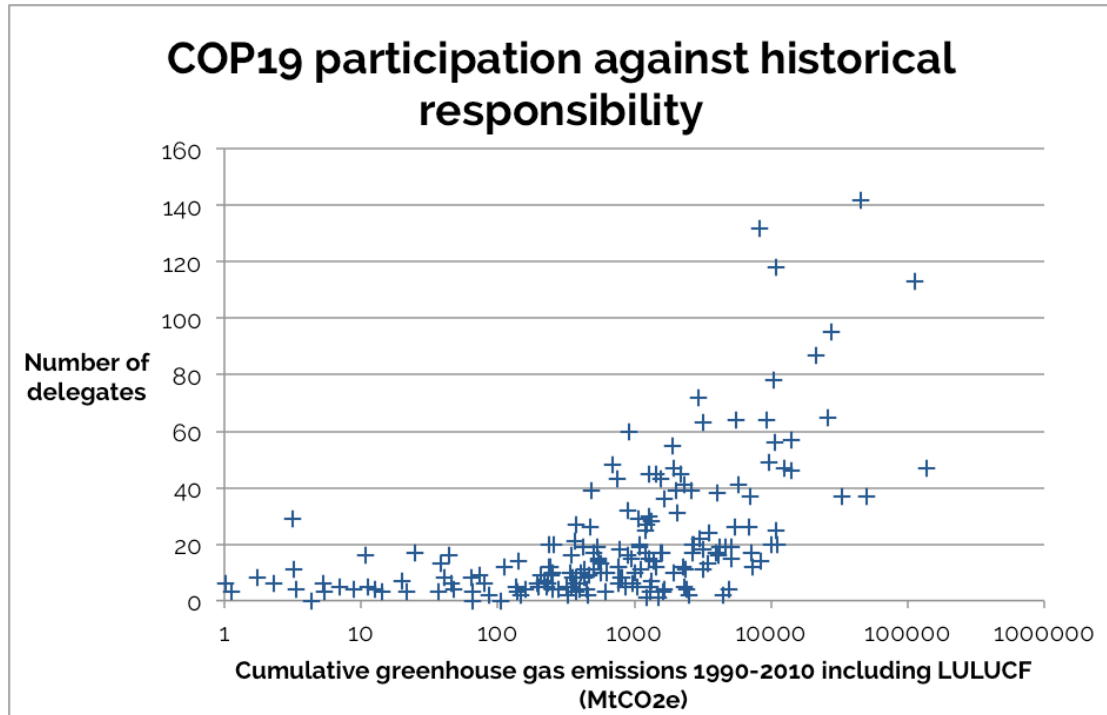
I found that the least vulnerable countries send large delegations, while highly vulnerable countries – those with the most at stake in the negotiations – send small delegations, and therefore are less able to exert influence in the discussions. This is especially apparent when plotting the representation of the 15 most vulnerable and 15 least vulnerable countries. When plotting the data in respect of all countries, a weak positive trend is seen.



Finally, I looked at representation compared with historic responsibility. To analyse this, I used the CAIT 2.0 data. Produced by the World Resources

⁴ <http://index.gain.org/ranking>

Institute, this is a collection of climate emissions data⁵ which compiles data from a variety of non-governmental sources to create a six-gas, multi-sector, and internationally comparable data set for 186 countries.⁶



⁵ WRI, CAIT 2.0. 2013. Climate Analysis Indicators Tool: WRI's Climate Data Explorer. Washington, DC: World Resources Institute. Available at: <http://cait2.wri.org>.

⁶ <http://cait2.wri.org/faq.html>

As can be seen, countries with the most historic responsibility sent the largest delegations, and countries with the least historic responsibility sent the smallest delegations. This epitomises the point that existing geopolitical structures influence the practical arrangements and process of the talks. Countries simply do not start from the same foundations; existing inequities pervade into this space and influence the substantive discussions around equity.

In summary, countries with the least historic responsibility, least money, and highest vulnerability to the effects of climate change tend to send the smallest delegations. This means that they have the least power and influence over the climate change negotiations. This is deeply problematic. Broad and equitable representation is crucial to ensure a fair outcome that is consistent both with a 2 degree Celsius target and with climate justice.

I propose that we should recognise a right to meaningful participation within the UNFCCC process. The principle of public participation holds that those who are affected by a decision have a right to be involved in the decision-making process. This is a vital means of empowerment and part of democratic governance. Indeed, Principle 10 of the Rio Declaration 1992 enshrines public participation as part of its 27 principles. While this concept could arguably be extended to youth, indigenous peoples, and other affected stakeholder groups, at the very least it should apply to all countries. Clearly, at the moment, the right to meaningful participation is not being met in respect of all countries.

III. Facilities

The facilities accorded to each delegation vary wildly. The United States, China, and the European Union all have massive pavilions, with reception desks, coffee machines, private viewing rooms, couches, and areas to hold their side-events and workshops. The New Zealand team has a small office which they can barely fit into. Other countries share offices. New Zealand's office in Cancun was a very small hotel room dominated by a spa pool, which the delegation used as a makeshift table.⁷ These facilities are directly related to how much a country can afford. WiFi, space, couches, printing facilities, kitchen facilities, side-event rooms: countries can obtain these features if they pay for them.

⁷ David Tong "It just isn't fair" <http://adoptanegotiator.org/it-just-isnt-fair/> , accessed 18 December 2014.

IV. Negotiation by exhaustion

Negotiations are always scheduled to end on a Friday evening. Often, however, the last session runs overtime due to countries' inability to agree, extending non-stop into Saturday or even Sunday. When this happens, many countries still have to leave on Friday, because they can't afford to change their scheduled flights or stay in expensive hotels for another night. The big powers, of course, have no such issues.

Much of the important decisions are made at the last minute in this high-pressure, late-night environment, but some of the most vulnerable states cannot afford to be there. They aren't at the table and so they can't fight for their own interests at this crucial moment. This is an inequity in participation that needs to be remedied.

In addition, the physical exhaustion of those negotiators that stay becomes a real issue, especially when you take into account the delegation size problem.

V. Location

The COP location rotates on a five-yearly cycle. It must visit the following regions in order: Western Europe, the Americas, Africa, Asia & the Middle East, and Eastern Europe. As is apparent, Europe features twice on this list. Although this may have made sense in 1992, when Eastern Europe comprised economies in radical transition, it makes no sense now especially in terms of travel cost. Location is important not only because of travel cost, but also because of the power of the COP presidency. The attitude and effectiveness (or otherwise) of the COP presidency can make or break a decision. A reassessment of this cycle is needed.

VI. Huddles

In the fraught final hours of the negotiations, parties often request a "huddle". This is when the negotiators all stand up from their chairs and form a tight-knit circle, during which key decisions are often made. Predictably, negotiators from influential countries are most often at the centre of the huddle, while less fortunate countries miss out on the crucial moments. This is an extremely non-transparent method of decision-making and makes it extremely likely that not everyone will get to have a say. As such, I recommend that huddles should be banned from negotiations.

VII. Conclusion

The ways in which global inequities play out in the UNFCCC negotiations are myriad. Representation, facilities, huddles, location, and negotiation by exhaustion combine to mean that some countries are severely disadvantaged in terms of representation and participation in the process. However, unfortunately, unlike in domestic law, in international law there is no conception of procedural fairness in decision-making, meaning that these unfair processes continue to culminate in outcomes which are legitimate, no matter how inequitable they may be. Until these problems are solved in some way, it will not be possible to reach an equitable agreement, or one which stands a chance of keeping the world below 2 degrees of warming. I propose the recognition of a right to meaningful participation in the UNFCCC process. The implementation of this right would necessarily address these issues.