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ORIGINAL PAPER

Negotiating by own standards? The use and validity of human rights norms in UN climate negotiations

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Abstract Since its inception, the UN Framework Convention on Climate Change has been inclined to natural scientific and technocratic perceptions of climate change challenges and policy solutions. Furthermore, states have traditionally been depicted as the main subjects of international climate politics. Only in 2010, concrete references to human rights were incorporated into UN climate agreements. This has a double binding force: First, states thereby re-emphasize the principal validity of those standards that they have acknowledged—qua signature and/or ratification—as guiding their actions: the social and political rights that are captured in the Universal Declaration of Human Rights and the two binding human rights covenants. Second, the incorporation of human rights norms into UN climate agreements officially and formally broadens the normative scope of negotiating and implementing these policies. However, after 2010, states have neither substantiated this engagement nor further built on it argumentatively. In contrast, human rights references are—again—mostly absent from states' positioning in UNFCCC politics. In this article, we aim at explaining this empirical puzzle. In the first part, we elaborate our theoretical approach and carve out the functional, political and legal linkages between human rights and climate politics. Building upon participatory observation, expert interviews and analysis of primary and secondary documents, this will then be followed by explaining parties' anew reluctance to further apply a human rights-based approach in climate politics.

Keywords Climate change · UNFCCC · Human rights · International negotiations · Linkages · Frame alignment

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1 Introduction

In October 2014, a number of experts of the Human Rights Council sent an open letter to the state parties of the United Nations Framework Convention on Climate Change (UNFCCC) demanding that the new climate agreement to be adopted in Paris in 2015 needs to "respect, protect, promote and fulfill" human rights (OHCHR 2014). Additionally, parties were urged "to launch a work program to ensure that human rights are integrated into all aspects of climate actions" (ibid.). Already earlier that year, the United Nations Independent Expert on Human Rights and the Environment, John Knox, had clarified that states' obligations to protect human rights are binding to the contracting states, also in situations of environmental challenges and a changing climate (Knox 2014).

At first glance, this linkage seems quite obvious in view of the actual impacts of climate change, for example pertinent to the right to shelter and life. Given the widespread ratification of human rights agreements (Liese 2006; Risse et al. 2013), the international community seems to have accepted the fundamental validity of these rights as guiding values for its actions. Hence, the argumentative linkage that actors from outside the UNFCCC formulate could be regarded as a strong point to motivate ambitious climate politics in the near future. Similarly, it could be expected that those states that are most affected by climate change already today would follow this line of argument to pressure mitigation laggards, to politicize the process and to enforce their own preferences.

However, when looking into parties' submissions to the UNFCCC process until 2013, we find some puzzling absence of such reasoning and accompanying language. In this paper that is based on participatory observation, interviews and review of primary and secondary documents, we will try to make sense of this observation. We expand on basic ideas that have been developed in a recent study (Wallbott 2014b) that introduced a typology of causes for omission of argumentative linkages between different issue areas. As compared to that analysis, we aim to further improve our understanding of actors' strategic selectivity in international negotiations as we, *first*, specify in more detail the rationales for (non-)linkages between human rights and climate politics in negotiations and, *second*, do not only focus on the deliberate choices of one coalition but on the entire UNFCCC community. We aim at an enhanced understanding of the concrete reasons for keeping human rights and climate politics separate by bringing together substantial theoretical and conceptual work with expert knowledge from interviews and a systematic analysis of policy documents. Developing a deeper understanding of the causes for omissions helps to gather first ideas on how to overcome this non-alignment. Hence, our undertaking is interesting for scholars of international relations and practitioners alike for it enhances our knowledge concerning the possibilities and limits of change in global politics.

Thus, the guiding question of our research is "Why do negotiators in the UNFCCC not substantiate their arguments through linkages with human rights norms?" To answer this question, we will not perceive of a human rights discourse in an exclusively legalistic manner but instead also as a socially constructed discourse that is shaped through the actual practices of those who promote and reject these norms and those who portray themselves or others as the respective objects or subjects of these rights. We will examine *why* human rights are discarded in the specific field of UN climate negotiations and show that this is due particularly to a lack of awareness among negotiators regarding human rights and concrete state obligations in this respect as well as due to (national) cost–benefit calculations. On this basis, we will formulate some tentative thoughts concerning the possible

implications of the human rights–climate change debate on the relation between different kinds of actors in global politics and the quality of the respective norms.

To inquire into the strategies underlying the non-use of rights language, we proceed as follows: In the next section, we will elaborate our theoretical framework on processes and means of international negotiations and how (non-) linkage of different issues blends into this. Specifically, we build on an analytical approach that differentiates between intended and unintended omission, and between neglect that challenges the fundamental validity of the norm, e.g., a human right, or its application in a specific situation. Section 3 will specify the areas of common concern between climate change and human rights politics. In Sect. 4, we will explain why parties omit human rights language in UN climate talks. We will conclude by assessing possible implications of our findings for the character of political stewardship in this particular area of global governance.

2 Theoretical considerations on international negotiations and frame alignment

2.1 International negotiations: spaces for creative problem-solving and frame alignment

International negotiations are means for the formulation of coordinated and collective policy measures to resolve disputes between states and to tackle challenges of common concern. By employing concomitant modes like arguing and bargaining (Müller 2004) in issue-specific regimes, parties attempt to "coordinate their activities and develop mutually acceptable agreements on the basis of joint analysis of interests and positions" (Kremenyuk 1990: xi). One important strategy of negotiators to increase the weight of their arguments in these processes is to strategically engage in rhetorical linkage of different norm sets and issue areas, like, for example, human rights and climate change. Such linkage is a likely strategy under the following conditions (see also Haas 1980: 370–375): Actors acknowledge the general validity of the respective norm and its suitableness in a specific context; there is consensual knowledge on the relation between different issue areas and/or norm sets; actors can expect redistributive gains from the alignment because it enlarges the zone of possible agreement among parties. But the framing tactics of negotiating actors do not only relate to their strategic choice of *affirmative* linkages. They also show through the deliberate *discarding* of frame alignment, that is, through conscious and active non-engagement with possible linkages. However, the omission of such nested argumentation can also result from unintended neglect. In sum, if discourses between different institutions or norm sets are kept separate, they may be referred to as "*contained*," and three different types of such omission can be differentiated: *"passive*," *"pragmatic"* and *"principled"* (Wallbott 2014b). These mechanisms will be presented in more detail in the following (Table 1).

2.2 Discarding the alignment of frames in negotiations[1]

The term *"passive omission"* describes a situation when negotiators do not enlarge the range of their arguments due to either unawareness regarding the existence/availability of

[1] Frame alignment is different from issue linkage, which broadens the zone of possible agreement through the simultaneous negotiation of separate issues (Haas 1980; Sebenius 1983; Davis 2004; Poast 2012). In

Table 1 Types of contained discourses (*source*: Wallbott 2014b)

		CONTESTATORY DISCOURSES	
		validity of norm is not challenged *(applicatory discourse)*	***validity of norm is challenged*** *(justificatory discourse)*
NON-ALIGNMENT OF NORMS/ISSUES	**unintended non-linkage**	(a) passive omission	
	intended non-linkage	(b) pragmatic omission	(c) principled omission

different norm sets that could be linked, or regarding linkages that have already been established and that could be drawn upon. It can be the result of individuals' institutional affiliation, educational background or professional culture that has given rise to dominance of different rationalities and principles (box a). The underlying assumption is that culture and institutional logics are heterogeneous in their content and function and that they are "fragmented by domain" (DiMaggio 1997: 280). On the one hand, such domain-specific schematic routines ("automatic cognition", DiMaggio 1997) are the most readily available means for individuals to organize any kind of new information. Cognitive schemata simplify images of objects and phenomena and of relations between them. Thus, culture, including professional culture, can be regarded as the interplay between practices, which are "socially recognized forms of activity" (Barnes 2005: 27; Neumann 2002) that give rise to a specific interpretation of social and physical phenomena. From this derives that every context and social field has its own logic, dominant story lines and practices to establish a necessary level of coherence and regularity of the way things "should" be like (Hajer 1995: 44–46). Hence, individuals experience different degrees of availability, accessibility and activation of specific knowledge (Thornton et al. 2012; Pache and Santos 2013) depending on their embeddedness in a particular context. If an actor is *familiar* with a specific knowledge reservoir (e.g., concerning the validity and scope of human rights), it means that it is available but that the emotional and/or ideological ties are rather weak. Thus, activation and linkage are possible but do not come about automatically. Only if an actor *identifies* with a specific logic, knowledge about properties and relations of objects and phenomena (like, e.g., climate change and human rights) are readily available, highly accessible and most likely to be activated. Such an inclination can emerge through professional training and/or experience in addition to general socialization (Pache and Santos 2013: 10). Changes in (automatic) cognition can come about through adaptation of stable values due to personal insights and reflections on policy developments (e.g., raising awareness for the existence of a problem or through experiencing functional inadequacies of a particular problem-solving approach), but also through moral motivation and reversion

Footnote 1 continued
contrast, frame alignment does not require the concurrent resolution of two different negotiation items. Still, both processes are likely to be hampered when impartible issues like recognition or moral values are introduced. Therefore, negotiators often focus on negotiable sub-items that can be resolved through trade, compromise and technical solutions (Hirschmann 1994; Aubert 1972; Zürn et al. 1990; Mitchell 2006).

of preferences. Hence, social structures like networks are prone to give rise to the availability, accessibility and activation of particular schemata, logics and frames (DiMaggio 1997). As such, the construction of both formal and informal spaces for consultation and the exchange of information can lead to increased awareness and learning concerning content, implications, scope and causal relations of issue areas and norms. This might induce increased acceptance of the actual validity of norms by actors, for example negotiators, to broaden the scope of norm application through argumentative linkage.

However, if non-linkage still occurs despite communication and the setup of deliberative spaces and the spread of information, then this is likely to be a conscious strategy of actors' "discursive interplay management" (Wallbott 2014a; boxes b + c). It has been suggested that intended non-linkage can take two forms, distinguished on the basis of the acceptance toward the disregarded norm (Wallbott 2014b): First, intended non-linkage can result in line with contestatory processes that challenge the suitableness of norms and the actions that it should trigger in a given situation and for a given community. In these applicatory discourses, actors choose the norm set that seems to be most appropriate for goal attainment related to a given purpose or value (Habermas 1992: 197). These are cases of context-sensitive pragmatic contestation, and actors will take into account the specific characteristics of the concrete situation without challenging the validity of norms *per se*. The likelihood of such strategic ignorance increases with both the ambiguity and impreciseness of the norm's obligatory character as well as with its requirements for positive duties, i.e., its demand for proactive behavior (Deitelhoff and Zimmermann 2013). This "*pragmatic omission*" (Wallbott 2014b) might be due to cost–benefit calculations or rejecting responsibility for the required actions that the discarded norm might bring with it. But learning processes regarding the meaning of a norm and the claims that it involves (Deitelhoff and Zimmermann 2013; Wallbott 2014b) might trigger new discursive linkages after all.

Finally, intended non-linkage can result in line with processes of principled contestation that challenge the fundamental validity of a norm and its obligatory claims beyond application to a specific situation and in relation to a delineated community. Keeping issues apart under such justificatory processes as *"principled omission"* might aim at the decay of the norm and should go along with widespread disregard and violation of the norm in question, also in their institution of origin. Thus, the consequence of such continuous non-compliance could well be the overall erosion of the norm's stability and facticity in the long run (Zürn 2005; Deitelhoff and Zimmermann 2013).

In order to be able to assess whether these theoretical considerations hold value for the usage of references to concrete human rights norms in UN climate politics, we will, in the next section, review the relevant linkages and empirical developments in this issue area.

3 Climate change and human rights: areas of common concern

In principle, functional linkages between environmental/climate politics and human rights can be distinguished from political and legal linkages.

3.1 Functional linkages

The protection and promotion of human rights have been considered relevant for sustainable development and, more recently, as crucial "to move towards a green economy"

(OHCHR and UNEP 2012: 21–29). In a pragmatic reading, mutual benefits may be generated when linking human rights norms with environmental politics. Then again, *concerns* in the context of environmental and climate change relate to economic, social and cultural rights as laid out in the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) as well as to civil and political rights set out in the International Covenant on Civil and Political Rights (ICCPR 1966). According to a study by the OHCHR, climate change severely threatens the right to life, the right to food, the right to water, the right to health and the right to adequate housing but also collective rights like the right to self-determination (OHCHR 2009: 8–15). In this light, it can be argued "that the protection of the natural environment in special socio-cultural contexts is a sine qua non for the enjoyment of human rights" (Francioni 2010: 43). Particularly affected are countries with a high vulnerability to environmental changes. Here, human rights concerns pertain first and foremost to certain societal groups, including women, children and indigenous peoples but also the elderly and persons with disabilities (OHCHR 2009: 15–18). Hence, there is also a strong call for the introduction of procedural human rights, which would entitle individuals to take part in environmental-related decisions that affect their lives and to seek access to justice if their rights are violated (Francioni 2010: 42).[2] Finally, infringements on human rights may develop from those climate-related actions that are implemented at local levels, like the mitigation instruments Reducing Emissions from Deforestation and Forest Degradation (REDD+) and projects of the Clean Development Mechanism (CDM). These instruments potentially conflict with land rights, property rights, the right to self-determination and pertinent social rights, among them, the rights to adequate housing, food, water and means of subsistence (Schapper and Lederer 2014; Schade and Obergassel 2014).

3.2 Political and legal linkages

At the global level, a first formal recognition of the linkage between human rights and the preservation of environmental quality appeared in the Stockholm Declaration on the Human Environment of 1972. The first paragraph of the Declaration states that "[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights." Furthermore, "[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations" (UN 1972). However, this language was not preserved in the years to come. The Rio Declaration of 1992 fell behind the human rights language of the Stockholm Declaration. Its first principle reads instead that "[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" (UN 1992). Although both, the Stockholm and the Rio Declarations, are considered major milestones in the development of international environmental law, they feature different foci that can be explained by resorting to the historical context of the drafting periods. Prior to Stockholm and even during the conference in 1972, it was clear that states wanted a declaration on the human environment containing basic principles (including rights references emphasizing state obligations) that would not be legally binding. In contrast to

[2] One seminal institution in this regard is the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Also, jurisprudence of the European Court of Human Rights has been inclined to strengthening procedural aspects (Francioni 2010).

that, the mandate of the working group drafting the text of the Rio Declaration was expanded to include development as well. Thus, the main concern at this time had shifted to a levelled "sustainable development" approach not only referring to state obligations but also comprising the duties of other stakeholders (Handl 2012).[3] More specifically, neither the UNFCCC nor its subsequent legally binding Kyoto Protocol mentions human rights or refers to climate change as an issue that might be a threat to sovereignty, cultural survival or statelessness (Limon 2009: 455).[4]

It was only in 2005, when the specific debate on the relationship between climate change and human rights—which is our focus on the next pages—gained significant impetus by a petition of the Inuit posed before the Inter-American Court of Human Rights (IACHR). In this petition, Inuit from the United States of America (USA) and Canada accused the USA of violating its human rights obligations as it did not reduce its greenhouse gas emissions (Knox 2009). Although the IACHR decided to halt the petition's proceeding in 2006, it held a "thematic hearing" that can be viewed as a starting point for further, more systematic investigations of the link between climate change and human rights (Orellana and Johl 2013: 4). Hence, the Inuit petition turned into a prominent case, which triggered broader discussions and re-focused the climate change debate toward implications for individual and community rights-holders (ibid.).

In 2008, the Human Rights Council adopted its first resolution on "Human rights and climate change" (Human Rights Council 2008: Resolution 7/23). The resolution requested the OHCHR—in consultation with the Intergovernmental Panel on Climate Change (IPCC), the Secretariat of the UNFCCC and other stakeholders—to conduct a detailed empirical assessment on the relationship between climate change and human rights (ibid.). This study, based on the scientific review of IPCC's Fourth Assessment Report (IPCC 2007), was presented to the Human Rights Council in January 2009. Although it did not establish any clear causality (i.e., there is no statement confirming that environmental changes indeed *lead* to rights infringements), it refers to the implications "[…] global warming will potentially have […] for the full range of human rights […]" (OHCHR 2009: 8). Whereas the report is rather silent on the content of state duties, it makes clear that they are not limited by territorial borders (Knox 2009: 478) and that they include an obligation of international *cooperation*, which is also anchored in many relevant human rights conventions. The OHCHR report was reflected in the Human Rights Council resolution 10/4 (Human Rights Council 2009) which also called for increased exchange of information and policies between the OHCHR and the secretariat of the UNFCCC, thereby acknowledging the relevance of bureaucratic leadership in the interaction of international institutions.

In 2010, the OHCHR further specified its message and started to refer to a "human rights-based approach to climate change negotiations, policies and measures" (OHCHR 2010). It demanded that the design of all climate policies and programs should be in line

[3] Some observers note that this approach has remained dominant until today (Francioni 2010; Gupta 2007).

[4] The broader linkage between the environment and human rights emerged in regional bodies and instruments, e.g., in the African Charter on Human and Peoples' Rights and Art. 11(1) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Müllerová no date) and the 'Manual on Human Rights and the Environment' by the Council of Europe (2005). See Gupta (2007) for a list of legal actions in different parts of the world and Francioni (2010) for a detailed review of environmental considerations in the European Convention on Human Rights, the African Charter, and the American Convention on Human Rights. Examples of developing national climate change jurisprudence can be found in the USA (National Environment Policy Act, the Clean Air Act and the Endangered Species Act), in Australia (on land use planning decisions in respect of coal mines), in Nigeria (on human rights violations from gas flaring) and in Germany (on access to information on export credits).

with fundamental human rights standards and that their fulfillment shall be the main "objective" in these actions (ibid.). It can be argued that by this claim the OHCHR aimed at redefining the traditional technocratic mandate of the UNFCCC which was specified in 1992 as "to stabilize greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system" (UNFCCC 1992: Art.2).

Also, Human Rights Council resolution 18/22 (Human Rights Council 2011) in 2011 emphasized that human rights standards can strengthen policy-making in the area of climate change. Furthermore, by Human Rights Council resolution 19/10 (Human Rights Council 2012), the post of an independent expert "on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment" was created. With this, the Council followed a NGO Social Declaration in which 31 organizations had called for the establishment of "a new special procedure with an independent expert on climate change and human rights" (OHCHR and UNEP 2012: 15). The appointed expert, John Knox, presented his second annual report to the Human Rights Council on 10 March 2014, in which he elaborates on procedural and substantive human rights obligations relating to the environment, drawn from existing international agreements and interpretations (e.g., commentaries). By referring to binding conventions—such as the ICCPR, the ICESCR, the CRC but also the European Convention on Human Rights, the American Convention in Human Rights and the African Charter on Human and People's Rights—Knox constructed an "inter-institutional discursive [argumentative] space" (Wallbott 2014a) and called upon states to comply with these previous commitments.

Against the background of the sketched proliferation of a climate–human rights nexus within the broader UN system, it would come without big surprise if human rights norms would have been taken up to the same extent within UNFCCC politics. What the specific rationales for states could be in this regard will be explored in the next section.

3.3 Possible rationales for linking UN climate politics and human rights norms

In recent years, negotiations on a follow-up agreement to the Kyoto Protocol (which ran out in 2012) have come close to collapse various times. Also funding as well as implementation of mitigation and adaptation policies is far from sufficient. The consequences of such insufficient action are especially daunting for developing countries, particularly for small islands and low-lying coastal countries, and for poor parts of the population within each state. Against this backdrop, it would seem intuitively plausible that those affected most severely by the impacts of climate change would build on every available argumentative means to motivate other parties to engage in more ambitious climate politics. Could human rights be a useful device in this regard?

On the one hand, one could doubt their benefit as human rights goals are chronically under-fulfilled anyway (Woods 2010) due to partial disagreements about the validity of human rights as well as to enforcement problems and implementation challenges (e.g., Dudai 2009). Also, it could be argued that a linkage with human rights was still too controversial to be of immediate value, because of contestation regarding the quality of environmental protection to be achieved, benchmarks for measuring impacts and progress, levels and comparability of protection across different territories, etc. (Rajamani 2010: 409–410).

On the other hand, though, we assume that due to the character of human rights as being universal, inalienable and indivisible, UNFCCC negotiators could alter the agenda and frame of justification for climate politics and policies by resorting to these norms. In more

detail, a linkage would strengthen their case for the following moral, political and legal reasons.

First, human rights arguments set stringent standards for appropriate state behavior and emphasize the need for immediate political action. They cannot be easily ignored (Hiskes 2009: 2), and human rights violations regularly draw heavy criticism and the need for justification on the part of rights-violators. State actors from democratic countries usually do not shy away from referring to human rights and claim that these standards constitute their identity (Risse et al. 1999: 23; Jepperson et al. 1996; Risse et al. 2013). Hence, a rights-based approach would depict climate change as a matter of urgency and emphasize a "pressingly relevant" need for action (Hiskes 2009: 3). It stipulates that states avoid further damage or harm by meeting their mitigation obligations and that they foster positive action regarding technological and financial support for mitigation (e.g., re-structuring national energy systems) and adaptation (to increase the level of social security in vulnerable states).

Thus, *second*, a human rights perspective can be fruitful for assigning obligations in the climate change context as it provides a framework for identifying rights-holders and duty-bearers (OHCHR 2006; Schapper 2014; Wallbott 2014b). In many cases, obligations can be derived from existing human rights treaties that state parties have already committed to. They do not only exist between a state and its citizens but also between a state and the citizens of other countries. These extraterritorial state obligations, often framed as a duty to international cooperation, have found entrance into the human rights edifice in the Charta of the UN, the Universal Declaration of Human Rights and in the legally binding ICESCR (de Schutter et al. 2012: 1091–1104; Knox 2014). More recently, they have been strengthened in targeted treaties, like the Convention on the Rights of the Child, and in the 2011 Maastricht Principles on Extraterritorial State Obligations (Kämpf and Winkler 2012; Schade and Obergassel 2014). Increasingly, human rights obligations are also assigned to corporate and civil society actors (Schmitz and Sikkink 2013: 827). Hence, human rights norms have been emerging as a means to crystallize chains of responsibility between different sets of actors.

Third, the human rights system works with concrete mechanisms that are not (further) subject to political negotiations (see also Obokata 2012: 116, CIEL and FES 2009). These include the complaint and reporting procedures of the treaty bodies that might bring new impetus to climate debates, since they do not refer to "victims" but to "rights-holders" that can address judicial or quasi-judicial bodies (Schapper 2014: 53). In this, the *human* rights-frame is different from and stronger than previous rights language like the "right to development" which has been part of UN declarations and UNFCCC agreements already before 2010 but is not (legally) binding. In particular regional human rights systems have led to increased justiciability in the past—also with respect to economic, social and cultural rights. The European Court of Human Rights, for instance, has made social rights justiciable in several cases of environmental challenges and has claimed compensation even from private polluters (Humphreys 2012: 35–38; Schapper 2014: 75–76).

Fourth, as the international human rights system is one of the most recognized norm sets worldwide—as measured by membership—an invocation could be considered to transcend the particularist narratives that have characterized climate politics throughout the past decades. It would give its proponents the option to be portrayed as a *good global citizen* that promote policy coherence and legitimacy (see also Meyer 2004), whereas those who reject the validity of such linkage would risk to be depicted as adversarial to the normative achievements of the international community.

Finally, a human rights framework pertains to questions of transnational justice. Three dimensions of climate justice have been intensively debated, mainly in political philosophy/theory and increasingly, also in international relations scholarship. To start with, international justice pertains to mitigation, financial and technology transfer obligations between states, i.e., developing, emerging and developed countries (e.g., Bulkeley and Newell 2010: 29). Another dimension is intra-generational justice demanding an ecologically sustainable future that guarantees the enjoyment of human rights for coming generations (Hiskes 2009; Caney 2008; Shue 2014; Moellendorf 2014; Jamieson 2014). Finally, aspects of intra-societal justice relate to the vulnerabilities of different groups within one society (e.g., Bendlin 2014; OHCHR 2009; BRIDGE and DFID 2008; Schapper 2014). Authors from Political Theory (e.g., Hiskes 2009) have argued that human rights can be understood as the normative foundation for climate justice. Hence, respecting, protecting and fulfilling rights and utilizing the instruments of the human rights apparatus can count as important steps toward achieving justice in climate-related matters and could therefore be expected to surface as arguments in UNFCCC debates.

In sum, new combinations of discursive categories that integrate human rights arguments with climate politics would break open the traditionally technocratic boundaries of the latter, and the proponents of such a framing would modify the script of how to tell the story of climate change by broadening the scope of application of human rights norms to UNFCCC policies, politics and the overall polity setup. Such a linkage would substantiate the voice of those who challenge current climate politics with increased authority and plausibility.

3.4 Development of human rights language in the UNFCCC

Yet, most of the UNFCCC's history, its major documents and agreements, including the convention itself, have not contained any human rights language. This started to change by the end of the first decade of the twenty-first century. Particularly between 2008 and 2010, countries from Latin America started to explicitly argue in favor of human rights approaches to UN climate politics.[5] However, they did not make any specific proposals for incorporating human rights vocabulary (Rajamani 2010: 400–401). And still, at the seminal COP-15 in Copenhagen in 2009, there was no decision in the Ad hoc Working Group on Long-term Cooperative Action (AWG-LCA), the negotiation stream in which human rights had been brought to the table. The draft decision—which included the line that parties noted resolution 10/4 of the UN Human Rights Council and were "[m]indful that the adverse effects of climate change have a range of direct and indirect implications for the full enjoyment of human rights" (UNFCCC 2010a: 7)—was postponed to the next year.

In the run-up to the next COP, Bolivia pushed for stronger rights language. From a conference in Cochabamba which had brought together more than 35,000 participants from civil society movements and organizations, Bolivia had derived a mandate and introduced

[5] One reason for this could be that there were many cases in Latin America, in which climate policy implementation had led to human rights infringements, especially among indigenous peoples. While this is not to say that this did not happen in other countries or regions as well, those countries became pressured from inside by oppositional advocacy groups and their active civil society base, and from outside through international channels to work against those effects (Expert Interview, Representative of an Environmental Think Tank, 16th November 2013, COP-19 in Warsaw). Recently, in some cases, pressure has raised to a level in which CDM projects, such as Barro Blanco in Panama, became suspended at the order of the government (Carbon Market Watch 2015).

a submission to the UNFCCC according to which the rights of developing countries, human rights, rights of indigenous peoples and rights of Mother Earth should be guiding principles of international climate politics.

Then, at COP-16 in Cancun, it was agreed that "[…] parties should, in all climate-change related actions, fully respect human rights" (UNFCCC 2011: 4). In addition to that, a reference to Human Rights Council Resolution 10/4 was made in the preambulatory clauses of the Cancun Agreements. While preambles are considered to have strong symbolic and interpretive potential and set out the context of the respective instrument, they are not binding. Hence, even though they do not create substantive rights and obligations, they "can add color, texture and context to an agreement" (Rajamani 2010: 404).

From 2010 to 2013, the relatively marginal status of human rights vocabulary declined further. Agreements recite the Cancun Agreements in the preambles of subsequent documents but as Beck et al. (2015) have found in their analysis of submissions running up to COP-19 in Warsaw, explicit human rights arguments play only a marginal role in contemporary processes. They show that, *first*, Ecuador was the only state party submitting a body of text with direct human rights demands. And *second*, explicit references to concrete human rights were only used by non-Annex I parties and in no single case by Annex I states (Beck et al. 2015: 73). But how can we make sense of this, given the tremendous developments that the climate–human rights nexus had developed outside the UNFCCC process since 2010?

4 Explaining (contemporary) omission of human rights language in UN climate politics

To answer this question, we have conducted expert interviews during UNFCCC negotiations in 2013 and 2014 (in Warsaw and Bonn) with party delegates and representatives of one major transnational advocacy network that lobbies for the institutionalization of human rights into the climate regime. The members of the advocacy network are civil society organizations (CSOs) that have been observing institutional linkages between both regimes prior and post to the Cancun Agreements. Due to their expertise in pushing rights within the UNFCCC process and their frequent interactions with state negotiators, their expert knowledge is particularly significant.

4.1 Passive omission: lack of awareness

A first reason expressed by a considerable number of interviewees is a lack of human rights awareness among climate negotiators. This lack relates to the political and legal linkages that have already been established and that in fact subject UNFCCC politics to considering human rights, as well as to the functional linkages between both areas. Emphasizing the former aspect, one of the activists of the transnational advocacy network voiced:

> […] they [the negotiators] believe human rights is for their colleagues who are negotiating in Geneva, for instance. It's not their mandate here to touch on it because they don't have expertise, it's not the right forum […] (Interview, Academic and Activist, 17th November 2013, COP-19).

Hence, lacking awareness is partly bound to the already complex and highly technical character of climate politics. Negotiators usually aim to focus the debate on quantitative emissions reductions (ibid.)—particularly when they are involved with other negotiation

streams than the AWG-LCA which has been characterized as the most political space of the UNFCCC (Interview, former national delegate and UNFCCC co-chair, June 12, 2014, Intersessionals). An interviewee of an indigenous peoples' rights organization brings this to the point:

> This is a real challenge: mainstreaming human rights in a discussion that has been usually about only emission reduction. Like for how many years? (Interview, Representative of an Indigenous Rights Organization, 16th November 2013, COP-19).

On the other hand, such high levels of unawareness and incomplete information among negotiators themselves (see also Zartman 2009) imply that climate diplomats also lack knowledge pertinent to national human rights obligations of state governments and concerning the possible adverse rights impacts of climate policies at local levels. Again, negotiators seem to not always be aware of these linkages, as compared to other colleagues who are more concerned with the implementation of policies on the ground:

> A negotiator on CDM is very likely to have absolutely no idea what we're speaking about when you raise the human rights issue. It is just not his field, he might come from the wrong department (Interview, Academic and Activist, 17th November 2013, COP-19).

Linking these findings back to the theoretical considerations on different types of contained discourse elaborated above, it seems a valid assessment that climate negotiators passively omit human rights from negotiating texts because they are embedded in the very particular context of their professional culture. Their interpretation of climate change, the purpose of climate politics and the type of action required are still focused primarily on finding a consensus on technical matters, e.g., emissions reduction. Availability and activation of norms from other domains, e.g., human rights, do not occur automatically to the benefit of other well-established parameters from the fields of natural and technical sciences. It could be expected, though, that interaction with rights advocates, information exchange and (institutional) learning can eventually lead to building awareness concerning the complex linkages between climate change and human rights and to a behavioral change among these negotiators.

4.2 Pragmatic omission: avoiding costs

Moreover, there are two pragmatic causes that lead to omission of rights language. First, particularly those states that are severely affected by climate change (developing countries) often feature only small delegations and lack capacities, expertise and time to dive deeper into every negotiation strand:

> […] with climate change there are so many things happening at the same time [it is difficult to remember] […] I have never seen such a complex process (Interview, former national delegate and UNFCCC co-chair, 12th June 2014, Intersessionals).

Their delegations do not comprise enough experts to cover all the aspects discussed and to produce appropriate text passages and submissions.

Thus, engaging in yet another issue area and acquiring further expertise—pertinent to human rights in the context of climate change—appear to be too costly in terms of providing for the necessary time, manpower and information. If state delegations are too small to send a representative into every relevant meeting or if they experience regular "brain drain" due to changing composition of national delegations (e.g., participation of early

career practitioners/interns as in the case of small island states), this will result in comparably low levels of contextual information and awareness of thematic inter-linkages. This might then also lead to passive omission, i.e., to a situation in which negotiators simply do not know about the significance of rights standards that exist in other issue areas or even in more specific negotiation areas, like the AWG-LCA, within their own regime. In the same line of argument, parties might attempt to make progress rather on the technical side of negotiations—which unlike moral values (such as human rights) can be traded, compromised on or solved through instrumental adjustments. Negotiators attempt to keep the debate "simple" and to avoid further political debates (Interview, former national delegate and UNFCCC co-chair, June 12, 2014, Intersessionals) or controversial legal argumentation (cf. Rajamani 2010: 410). As a consequence, negotiators are likely to remove what they consider to be bypaths hindering consensus-building.

A second cost-related reason for contained discourse seems to be that state representatives do "[…] not admit that there are rights violations occurring in the context of the projects […]" (Interview, Representative of an Indigenous Rights Organization, November 16, 2013, COP-19). Particularly industrialized countries try to avoid any door opener for consequential arguments that could link historic emission responsibilities with claims for compensation. According to interviewees, this is especially true for the USA:

> And the US, for example, it's like they refuse to talk about human rights. Refuse. It's a non-starter. It's like a totally toxic kind of issue to bring to them. […] If you follow the Human Rights Council discussions and dialogues, the US refuses to talk about climate change in the human rights regime as well; for exactly the same reason. […] they won't talk about climate change in a human rights context because they don't want to be held liable for historic contributions to climate change. And they see that that's where this conversation is headed. It's all about liability and compensation and they refuse to have a discussion (Interview, Coordinator of the Transnational Network, 16th November 2013, COP-19).

Thus, against the backdrop of pertaining liability demands, states with significant historic emission responsibilities might—due to rational cost–benefit calculations—pragmatically omit human rights language from the negotiations and texts. Here, actors bear in mind their own pragmatic goal attainment and avoid to commit themselves to shouldering further costly duties. Yet, this argument does not only seem plausible to explain industrialized countries' containment of the climate debate. Also most developing countries abstain from a human rights approach to climate action.

Hence, a third cost-related reason seems to be that those states that rank low in their domestic human rights records are afraid that extraterritorial rights concerns may uncover human rights deficiencies or key gaps in implementation on their own territory. Therefore, these countries usually focus on national sovereignty and processes—to the disadvantage of more individualized claims like human rights—and Western historic emission responsibilities (Interview, Academic and Activist, November 17, 2013, and Interview, Representative of an Environmental Think Tank, November 16, 2013, both COP-19). It could also be conceivable that those states that are particularly vulnerable to the impacts of climate change and laggards when it comes to rights implementation do not play the human rights card to avoid any conditionality for climate funding that they might anticipate in the future.

Finally, states might also attempt to deter the human rights debate to other venues. Such tactical maneuver of avoiding "uncomfortable" discussions and responsibilities has come

to be known in the literature as forum shifting (Krasner 1983:16; Braithwaite and Drahos 2000; Benvenisti and Downs 2007; Drezner 2009).

> I think it is quite deliberate. […] I think parties try to avoid the difficult things. Just like the whole debate on climate change—initially it was a technical debate about emissions but now it has kind of deteriorated to a political debate, competition between countries in terms of development, in terms of power. […] the issue of human rights is very sensitive and a lot of countries do not want to discuss human rights. So they make excuses—that always come—that it's been dealt with elsewhere. Although it is the same countries that have to deal with it. But they make sure they avoid the discussion because they say there are other forums […] it doesn't belong to climate change [… and] they find ways to avoid what they don't want to discuss (Interview, former UNFCCC co-chair, 12th June 2014, Intersessionals).

This motivation might be particularly relevant to those states that have an interest in avoiding diffusion of those norms whose fundamental validity they challenge anyway, as we will show in the following section.

4.3 Principled omission: contesting the fundamental validity of (certain) human rights norms

As such, principled omission of human rights language in climate politics could come into play, for example, in the case of the USA that have not ratified the ICESCR or any targeted treaties containing social rights, such as the UN Convention on the Rights of the Child. Instead, they challenge the fundamental validity of economic and social rights as well as the implementation responsibilities that come with them. In light of (increasing) institutional developments and legal interpretations strengthening the indivisibility and interdependence of human rights (Rajamani 2010: 411–412), further support of corresponding language would run counter to this notion. Hence, strategic positioning in the context of human rights institutions of the UN system seems to spill over into the realm of international climate politics.

In sum, states' reluctance for employing a human rights language in international climate negotiations can, on the one hand, be explained with cost–benefit calculations, i.e., costly implications of obligations and duties. On the other hand, lacking rights consciousness, i.e., awareness among climate negotiators regarding the functional, legal and political linkages between human rights and climate politics, also provides meaningful explanations. Linking these results back to the institutional developments and interactions sketched above, it seems puzzling that state actors announced to "fully respect human rights" (UNFCCC 2011) in climate-related actions. With the subsequent omissions in mind, this appears as merely a formal commitment on paper and many states seem to hesitate to further develop on these norms or to include them in subsequent operational text. However, we assume that this demur does not run counter to our main argument. Rather, we would argue that the incorporation of some human rights references in the UNFCCC decisions was—at least by some parties—considered as little sugar pieces to calm public debate. Referring to these decisions in subsequent agreements just by mentioning their categorical reference number (e.g., Decision CP.15/xx) can then be interpreted as a shortcut and an intertextual ritual (Freistein and Liste 2012) to provide for a minimum level of normative coherence. However, specifying these prescriptions into more detailed and operational policy systems would bring states closer to actually having to

make substantial adjustments in their domestic contexts which, as elaborated above, are likely to be rejected as interference in sovereign affairs.

With a view to possible further developments, it seems that passive omission could possibly be overcome by means of advocacy and awareness raising, e.g., through experts from civil society. Thus, it would be required, particularly in the very technical negotiating streams of the UNFCCC, to "make politicians understand what the issues are and what needs to be done" (Interview, former national delegate and UNFCCC co-chair, June 12, 2014, Intersessionals). Some observers are convinced that such successful advocacy has already taken place to some extent, depicting that governments from Europe have become increasingly sensitized regarding the adverse rights effects of climate policies, such as REDD + programs and CDM projects (Interview, Representative of an Environmental Think Tank, November 16, 2013, COP-19).

On the other hand, deliberate forms of omission will be much more difficult to countervail. But one cost-related argument can at least partly be reduced by transnational and international cooperation. If CSOs support small delegations of developing countries to integrate rights language into their submissions, such transnational cooperation might lead to overcoming pragmatic omission:

> Many parties have so little capacities to follow half of the issues that it's actually very helpful to them if there is something drafted and they can either redraft it, interpret it or be able to kind of introduce it as it is. Their country position goes well with the language, they just didn't know, they didn't have time to actually formulate the language and so, you know, we are advocates but at the same time […] technical experts on gender issues (Interview, Representative of a Women's Rights Organization, 15th November 2013, COP-19).

Principled omission, in contrast, is most difficult to overcome. If human rights are rejected in the institutions of their origin, it is very unlikely that they will be accepted in other institutional arenas.

5 Conclusion

In this paper, we have analyzed the determinants of the non-use of explicit human rights language in UN climate negotiations that we have observed despite the proliferation of rights-based approaches outside the UNFCCC. Based on a threefold typology of "contained discourse" that distinguishes omission of normative linkages based on the type of contestation of the respective norm (issue-specific application or fundamental validity), we have found that both the "soft" dimension of lacking awareness among negotiators and the "hard" dimension of cost–benefit calculations and strategic communication are relevant factors. Furthermore, it seems valid to conclude that as long as no obligatory reparations for climate-related human rights violations exist, voluntary compliance with these norms will remain the major working mechanism, possibly leading to ongoing contestation of their application. Our interviewees have hinted above all at causes for discarding rights language that are tailored to gaps in knowledge or applicatory discourses. Also, various regional agreements exist that link human rights to broader environmental concerns. Hence, we assume that causes for omission are related above all to UNFCCC and delegation-specific factors. Furthermore, despite the instrumental value that human rights norms in climate politics seem to still hold, this is not to say that they do not possess a

moral authority and "dynamic force of their own" (Henderson 1988: 534). This means actors are always exposed to moral interdependence, embedded in the discourses which they attempt to shape, and they are required to sustain to a minimum level of normative coherence.

Having observed relatively little principled omission, we want to draw attention to the possibility to strengthen human rights in the climate regime through engaged civil society networks, like, for example, the *Human Rights and Climate Change Working Group*. Based on first empirical assessments revealing that a considerable part of the negotiating text on the institutional safeguards agreed upon for REDD+ programs in 2010 (UNFCCC/AWG-LCA 2010b: 52–59) originated from submissions of observer organizations, among them the International Indigenous Peoples Forum on Climate Change (IIPFCC), Indyact, Greenpeace, Germanwatch and the World Wide Fund for Nature (WWF) to the UNFCCC process in 2009 (IIPFCC et al. 2009; IndyACT et al. 2009), we assume that CSOs continue to work heavily against passive omissions (by raising awareness and advocating) and against pragmatic omission (by producing texts containing rights references themselves). For example, during COP-19 in 2013 and the Intersessionals in 2014, states and CSOs discussed stronger stakeholder consultation requirements and several references stating that activities under the CDM have to be carried out in accordance with human rights (Filzmoser 2013: 2; Schade and Obergassel 2014). Also, in the run-up to COP-20, CSOs fostered cooperation with the independent experts of the Human Rights Council which resulted in an open letter to the UNFCCC state parties. In this letter and at the subsequent COP itself, these UN officials and CSOs urged states to integrate human rights into the draft texts for COP-21 in Paris (2015) where a new binding climate agreement shall be adopted.

Further research may want to look into the distribution of political and issue-specific authority and "professionalism" that is attributed to these different types of actors. In this line, we see the need to work out in greater detail the determinants and actual extent of CSOs influence on state delegations (e.g., Böhmelt et al. 2014; Bernauer and Betzold 2012: 63), but also the factors that shape states' own pioneer activities (e.g., Latin American countries' submissions on human rights and climate change). Finally, the implementation of human rights provisions in climate-related action will require specific scrutiny of its own.

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