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ORIGINAL PAPER

The role of justice in the North–South conflict in climate change: the case of negotiations on the Adaptation Fund

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Abstract Justice, by and large, implies greater legitimacy and can persuade parties with conflicting interests to cooperate more closely on collective actions. Therefore, the aim of this article is to investigate the role that ethical arguments have played in restoring mutual trust between the developed and the developing countries in negotiations on the Kyoto Protocol Adaptation Fund and in transforming the patent failure of the Subsidiary Body for Implementation Bonn May 2006 meetings on its management into the encouraging success of the Nairobi December 2006 round. These meetings are analysed from the perspectives of procedural and distributive justice in order to interpret the negotiating dynamics and their outcomes. More specifically, procedural and distributive justice are, respectively, sought in the Bonn and Nairobi formal meetings through reference to, and the emergence of, principles and criteria of participation, recognition and distribution of power among Parties, and of Parties' responsibility for, and vulnerability to, climate impacts.

Keywords Adaptation Fund · Climate change · Justice · Negotiations

Abbreviations

AF	Adaptation Fund
CDM	Clean development mechanism
CEO	Chief executive officer
CERs	Certified emission reductions
COP	Conference of the Parties
COP/MOP	Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol
ECBI	European Capacity Building Initiative
EU	European Union
G77	Group of 77
GEF	Global Environmental Facility

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IPCC	International Panel on Climate Change
LDCs	Least Developed Countries
NIE	National Implementing Entity
SBI	Subsidiary Body for Implementation
SIDS	Small Island Developing States
UNFCCC	United Nations Framework Convention on Climate Change

1 Introduction

Adaptation to climate change consists of adjustment by human systems to the actual or expected physical effects of climate change, variability and extreme conditions (Smit and Pilifosova 2003). The unavoidability of climate change entails that all countries will have to adapt to climate impacts (IPCC 2007; Stern 2007) and incorporate adaptation into their regular development policies and plans, also as a means to reinforce and/or integrate mitigation options. The urgency of adaptation also requires that the richer industrialized countries, in compliance with obligations accepted under the United Nations Framework Convention on Climate Change (UNFCCC), must give financial, technical and institutional assistance to the poorer, more vulnerable countries with the least adaptive capacity (Verheyen 2002; Yamin and Depledge 2004; Mace 2005).

The funding of adaptation is particularly important for such countries because the current regime neither covers the costs of adaptation and of residual climate damages nor is linked to responsibility. In fact, the general attitude of the industrialized countries' negotiators is to view adaptation financing as additional development assistance which should be mainstreamed into development activities. "So far", mordantly argued an observer, "[the developed countries'] attitude has been: give them one penny and grumble and give half penny, bargain with them, buy them".[1] Adaptation financing, instead, should be additional and distinct from development assistance, as the UNFCCC demands and as the developing countries expect (Oxfam 2007), because, continued the same observer, "the UNFCCC isn't the place to do aid discussion, it's not charity, it's not development assistance, it's compensation. You are going there as a polluter who has harmed poor people and you are offering them compensation dependent on how much you have harmed them".

Therefore, unsurprisingly, the way in which adaptation funding is administered has assumed greater importance in negotiations and is becoming an element crucial for any possible development of international climate policy. It follows that the real challenge is the development of secure, adequate and predictable funding streams for the financing of adaptation needs in poorer, more vulnerable countries, possibly grounded on ethical considerations concerning responsibility for climate impacts and for their reparation, linked to the vulnerability of weaker impacted countries, and fairly managed. Ethical considerations can in fact play a major role as unifying principles that augment the political feasibility of negotiations, and ultimately facilitate collective actions, on adaptation funding and, more generally, on climate change (Gardiner 2004).

[1] The article and, in particular, the author's interpretation of the negotiations dynamics have greatly benefited from the insights and suggestions of observers informally questioned both at SBI 24, Bonn, and afterwards through email correspondence. Some of their opinions have been quoted throughout the article. However, they have been anonymized, given the sensitivity of much of the material covered.

Among the UNFCCC options in making adaptation funds available to the most needy countries, the Adaptation Fund (AF), established under decision 10/CP.7,[2] seems the most promising one: according to another observer: "the big game is on the AF", because it is the only "one which is going to have some money and precisely because, perversely, it's private sector money".[3] The AF, according to decision 28/CMP.1,[4] is intended to support "concrete adaptation projects and programmes in developing countries Parties that have become Parties to the Protocol". Article 12.8 of the Kyoto Protocol further provides that a levy (the 'share of the proceeds'), fixed at 2% of certified emission reductions (CERs) issued for clean development mechanism (CDM) projects, should fund the AF. Decision 10/CP.7 makes it clear that the AF is also to be financed from other, not specified, sources.

The difference between the AF and the other UNFCCC funds for adaptation derives from a number of characteristics (Muller 2007a, b). First of all, the AF is regulated by the Kyoto Protocol, not by the Convention. This implies firstly that it is outside the sphere of influence of countries that have not ratified the Protocol (basically the United States), and secondly that it represents an opportunity for other big players, such as the European Union, to assume a more proactive role in negotiations. Another specificity of the AF is the way in which its revenues are generated: that is, through the share of the proceeds mentioned above, which is expected to raise a greater flow of resources (between USD 317 million and 434 million, from 31 July 2010 to the end of 2012 according to the most recent estimates (UNFCCC 2010)) with respect to the other funds and to the potential amount of bilateral donations. Although the expected size of the AF will not cover the likely annual adaptation costs, this stream of funds is very important, for it is expected to be steady and certain, and it is likely to be increased by additional private funding (Muller 2006). Finally, the AF is the only fund which exclusively finances concrete adaptation activities and therefore a potentially very large number of projects,[5] through disbursement procedures more accessible to the developing countries, and especially to the lesser developed ones, than those of the Global Environmental Facility (GEF).

Because these innovative characteristics altered the traditional UNFCCC dynamics of cooperation and support between countries, they inevitably heightened the controversiality of the AF. In this regard, the ethical perspective seems particularly useful for grasping the resistance that the introduction of the AF faced, which was mostly overcome by confronting, during negotiations, substantial issues of procedural and distributive justice, rather than by relying on the usual arguments of development assistance—as will be shown in Sect. 3. In fact, negotiations on operationalization of the AF formally began at COP 11, but the breakthrough only came at COP 12 in December 2006, in Nairobi, where the apparently insuperable controversy on the management of the AF[6] was resolved when both

[2] FCCC/CP/2001/13/Add.1.

[3] The other instruments governing adaptation funding under the UNFCCC regime are the GEF Trust Fund, the GEF Strategy and Priority on Adaptation, the Special Climate Change Fund and the Least Developed Countries Fund.

[4] FCCC/KP/CMP/2005/8/Add.4.

[5] At its ninth meeting (Bonn, March 23–25, 2010), the AF Board issued a call for project proposals and also decided to accredit the first three agencies to manage grants from the AF, the so-called National Implementing Entities (NIE). Projects reviewed, under review and open for comments are available on the AF website: Internet: http://www.adaptation-fund.org/ (accessed November 22, 2010).

[6] For a complete analysis of the different options for managing the AF, see the Background Paper 'Overview of possible institutional options for the management of the Adaptation Fund', prepared for the 'Workshop on Adaptation Fund', held in Edmonton, 3–5 May 2006. Internet: http://unfccc.int/meetings/workshops/other_meetings/items/3672.php (accessed November 22, 2010).

factions—the developed and the developing countries—acknowledged substantive ethical issues and took a more constructive attitude which allowed adoption of the so-called Nairobi Adaptation Fund Decision (decision 5/CMP.2[7]). This states that the AF must be managed by the Kyoto Protocol governing body, the COP/MOP, and that it must follow a 'one-country-one-vote' voting procedure, whereas the other adaptation funds controlled by the GEF are subject to the traditional and, according to the developing countries, far less democratic GEF voting procedure requiring a majority of both countries and donations for carrying a vote. As far as the AF's governance structure is concerned, the Bali COP 13 (December 2007) successfully finalized the operational details (Muller 2008; Ott et al. 2008). Decision 1/CMP.3[8] established an 'Adaptation Fund Board' as the financial mechanism of the AF. Independent from the GEF, the sixteen Board's members are to be equitably selected among all participating groups of countries and are under the direct authority of the COP/MOP. The GEF should provide only a dedicated secretariat service, and in accordance with the wants of many developing countries, entitled Parties have direct access to the AF through a National Implementing Entity (NIE), without necessarily passing through multilateral implementing agencies. Ultimately, therefore, the governance procedures and structures of the AF assure more power, in terms of access to resources and control of the processes, to recipient countries than does any other UNFCCC funding instrument.

This article investigates the role that ethical arguments have played in restoring mutual trust between the developed and the developing countries at the formal meetings[9] of the UNFCCC Subsidiary Body for Implementation (SBI) on governance of the AF, and in transforming the patent failure of SBI 24 meetings (Bonn, May 2006) into the encouraging success of SBI 25 (COP 12 Nairobi, November 2006). The much debated issues concerning management of the AF addressed in these meetings are investigated from the perspectives of procedural and distributive justice delineated in Sect. 2, so that analysis and interpretation can be made, in Sect. 3, of their negotiating dynamics and outcomes. Section 4 advances some final considerations prompted by the investigation conducted.

2 The ethical bases and fairness and equity criteria for evaluating international adaptation funding

In order to investigate the ethical dimensions of international adaptation funding for evaluation of the SBI meetings on the AF, it is first necessary to provide a general, and thus inevitably controversial, definition of justice. Such justice can be defined as the fair process, which involves all relevant parties, of raising adaptation funds according to responsibility for climate impacts, and of allocating the funds raised in a manner that puts the most vulnerable first. The first element refers to the procedural aspect of justice, the others to the distributive one.

[7] FCCC/KP/CMP/2006/10/Add.1.

[8] FCCC/KP/CMP/2007/9/Add.1.

[9] I personally attended, and recorded, the Bonn SBI 24 meetings, whereas I followed the Nairobi SBI 25 meetings by means of the Web coverage provided by the UNFCCC. I am aware of the limitations due to exclusion from the empirical analysis of the informal level of negotiations and of conduct that has indeed a certain weight (Gupta 2000). Unfortunately, this source is precluded for obvious reasons. Nonetheless, as specified in Note 1, I have tried to include some relevant materials on this level drawn from correspondence with observers.

Fairness in international adaptation funding requires that both those responsible for climate impacts and those suffering them be involved in decision-making processes. To this end, such processes have to be rooted in considerations of procedural justice, a construct deeply entwined with the idea that a just process is the prerequisite of any legitimate authority (Shue 1993). In this context of analysis, Rawls's notion of pure procedural justice (Rawls 1999), in which there are no independent rules for the definition of what counts as a just outcome, but rather the focus is exclusively on principles and criteria defining just procedures, seems to be the most useful. This *ex ante* stance of pure procedural justice envisions, in fact, that evaluation of the justness of outcomes is left to principles and criteria of distributive justice, in order not to overlap the two fields of ethical analysis. The confusion between procedural and distributive justice in the controversial context of climate change negotiations may, in fact, be a further source of disagreement among parties.

Ethical reasons demand that those who have primarily caused climate impacts should be held responsible for them (Singer 2002; Gardiner 2004). Accordingly, the nature of the international adaptation funding problem requires that some subjects be retrospectively responsible for climate impacts and prospectively responsible for their reparation. Specifically, some subjects should be held outcome responsible (Miller 2004, 2007)—that is responsible for having made a situation bad intentionally but in a morally non-blameworthy way. In the domain of adaptation funding, this fault-based form of backward-looking responsibility (Shue 1993) of those who, even without moral guilt, have contributed to the problem in fact avoids including ethical issues that undermine the significance of the usual retrospective notion of historical responsibility espoused, for example, by the polluter-pays principle: for instance, the difficult distinction between the anthropogenic and non-anthropogenic nature of climate impacts, insufficient knowledge about the causes and effects of climate change, difficult application to collective entities such as states (Caney 2005; Miller 2008; Page 2008). Nonetheless, outcome responsibility alone cannot generate obligations to remedy climate impacts because of its moral neutrality (Moore 2008). Therefore, the ethical approach to responsibility in adaptation funding requires that outcome responsibility be complemented by no-fault forms of prospective responsibility (Shue 1993) that can justify remedial duties based on the capacity to act—in terms of institutions, technology, infrastructures, skills—of subjects in terms of discharging the 'bad situation' that their carbon-intensive lifestyles have imposed on other subjects, or of their welfare levels indicative of the ability to pay to support the financial burden of such actions.

On the other hand, some subjects are the rightful recipients of obligations of justice because of their great social vulnerability to climate impacts mostly produced by others (Paavola and Adger 2006). Therefore, turning to the third element of the adopted definition of justice in international adaptation funding—that is, the necessity to put the most vulnerable first—most useful for the ethical analysis of international adaptation funding is reliance on a starting-point notion of vulnerability, which for social systems is also termed 'social vulnerability' (Kelly and Adger 2000). This ethical imperative to put the most vulnerable subjects first has various justifications. Many theories of justice show a particular concern for the weakest and most socially vulnerable parties. Furthermore, also universal principles of justice state that subjects have a moral right not to suffer from the adverse effects of climate change.

The approach to distributive justice in adaptation funding just delineated starts from awareness that liberal theories of justice require stronger parties to assist weaker ones harmed by climate impacts as a means to achieve greater equality and to lessen injustice and that these constructs, as in the context of other environmental issues (Miller 1999), are

hence those best suited to dealing with the ethical aspects of international adaptation funding. In particular, Rawls's (1999) theory of justice as fairness and Sen's (1999) capability approach may prove useful in systemizing the various elements that form the above definition of justice in funding international-level adaptation to climate change.

In regard to procedural justice, the pure standpoint of the analysis is drawn, as said, from Rawls's approach, and makes it possible to define three principles of procedural justice (Paavola 2005; Paavola et al. 2006) as fundamental for international adaptation funding and to derive from them fairness criteria against which negotiations on the AF can be evaluated.

The first one, recognition, is the foundation of procedural justice in that it makes consideration of the characteristics and interests of all subjects or groups a vital part of planning and decision-making processes. This entails the effective inclusion on grounds of equality and fairness of all countries, including the most vulnerable ones, which are usually without voice, in all decision-making on adaptation funding, as demanded by the criterion of 'Inclusion of all countries' (Inclusion).

The second principle is participation. According to Fitzmaurice (2003), participation should encompass the involvement, the right to information and to be heard in policy and law making, and the right to a general review of the enforcement of laws. Accordingly, the second fairness criterion in negotiations on the AF, the criterion of 'Possibility to specify the terms of participation' (Participation), requires, on the one hand, the right to clarify and defend for every responsible subject (dispenser of funds) the magnitude of its responsibility and thus of its potential contribution, and on the other, for every vulnerable impacted subject (recipient of funds) the possibility of bringing its social vulnerability and adaptation priorities into negotiations, and for both groups of subjects, to make all these elements ultimately count in the processes of raising and allocating adaptation funds.

The final principle concerns the distribution of power, which, in order to foster the procedural fairness of the entire negotiating processes, should ensure that every party has the knowledge and skills necessary to take an active part in planning, decision-making and governance. It gives rise to a third fairness criterion, that of 'Commitment to assistance from richer to poorer' (Assistance), which requires the substantive commitment of richer subjects to providing different forms of assistance to weaker ones, for developing their ability to play an effective role in this complex scenario and for ultimately reducing their gap with respect to the developed world.

In the context of distributive justice, as far as the raising of adaptation funds is concerned, it seems useful to ground the nuanced notion of responsibility introduced on Rawls's theory of justice as fairness (Rawls 1999), because it sums up both equality and liberty, and these are essential for ethically substantiating the involved dimensions of outcome and prospective responsibility. Rawls's two principles of distributive justice—the egalitarian and the difference ones—entail, in the ambit of international adaptation funding, the equity criterion of 'Differentiated historical responsibility' (Responsibility). This suggests that countries' outcome responsibility should be calculated in proportion to cumulative emissions and that prospective responsibility requires that undeserved inequalities such as those deriving from dissimilar socioeconomic positions be taken into account. In practical terms, the current analysis entails that richer countries (Annex I Parties to the Convention in this context) with higher levels of social primary goods (resources, or income in measurable terms) should contribute the most.

On the allocative side of distributive justice, the theoretical reference is Sen's capability approach (Sen 1999), which exhibits a broadly egalitarian perspective on justice that aims at increasing the well-being of the poorer. In the context of international adaptation

funding, it is useful to refer to the notion of human security understood as the protection and promotion of a limited number of central components of well-being that characterize social vulnerability. The equity criterion springing from this construct of justice is that of 'Lack of human security' (Security). Specifically, this criterion claims that the lower the degree of human security, the greater should be the access for weaker Non-Annex I countries to adaptation resources, independently from their efficiency in using such funds.

3 Observation of meetings on the Adaptation Fund: failure (SBI 24) and success (SBI 25)

Despite being established at COP 7 in 2001, the negotiations on the management and governance of the AF really started at the SBI 24 meetings (Bonn, May 2006), where, however, the contrast between the North and the South produced a major failure.[10] The main issue at stake in Bonn was the identity of the subject that should operate the AF. Although many negotiation blocs exist within the UNFCCC, (see Gupta (2010, p. 646) for an overview of involved actors) in Bonn on one side of the divide were the developed countries generally supporting the GEF, on the other the developing countries, and especially the LDCs, which entirely rejected the GEF. In the words of an observer, the point was "who runs it [i.e. the AF]?", since "the GEF is desperate to control the AF", but "the GEF and the AF have an ugly relationship". As pointed out in the introduction, the developing countries' rationales justifying their strong preference for the AF mainly lie in its more expedited disbursement procedures and more democratic access than the GEF's ones. In fact, many developing countries, especially the poorest and most vulnerable, have considered the GEF and its management procedures to be extremely inefficient and awkward: a problem also recognized by the GEF CEO Barbut, who declared in Nairobi that she was "leading the GEF through a vigorous streamlining and recasting",[11] and in her speech to the GEF Council in December 2006 presented her vision of a 'new GEF', one that is strategic, innovative, equitable, accessible and focused. Also the UNFCCC has advanced concerns about the GEF's conduct: De Boer, former UNFCCC Executive Secretary, acknowledged at a GEF Council meeting the worries of developing countries and called for the GEF to be more responsive to the guidance of the UNFCCC, to facilitate

[10] It should be pointed out that there are diverse causes of the North–South contrast in the broader context of climate change. Gupta (1999, 2000), for instance, argues that the developing countries usually approach (or, at least, used to approach) negotiations by rejecting, with very few concessions, arguments from the North and failing to offer alternative proposals: a defensive and reactive strategy that produces negotiating deadlock and ultimately reciprocal distrust. Roberts and Parks (2007) instead observe that the global inequality that has produced the non-cooperative behaviour between the North and the South is primarily determined by the worldview and causal beliefs of the civil society of the South: these beliefs have generated in the developing world a widespread mistrust, divergent and unstable expectations on climatic issues, and, ultimately, negotiating strategies that have reduced the chances of achieving mutually acceptable agreements. The constructivist perspective, instead, generally maintains that the creation and development of theoretical constructs depend heavily on social dynamics, and, more specifically, that "discourses and practices of accountability/responsibility are socially constituted and contested" (Mason 2008, p. 15). Using this approach, Okereke (2008) shows that the uptake and impacts of North–South norms of equity and responsibility in international environmental regimes depend on a number of factors, the most important being the prevailing economic order (Okereke 2008, p. 45).

[11] 'Linking Adaptation to Development', speech of Monique Barbut, CEO and Chairperson of the Global Environmental Facility, at the UNFCCC Twelfth Meeting of the Conference of the Parties, Nairobi, Kenya, November 15, 2006. Internet: http://207.190.239.143/participants/secretariat/CEO/documents/UNFCCC_MB_speech.pdf (accessed November 22, 2010).

access to existing funding for adaptation and to give greater consideration to adaptation priorities. According to the developing world, two major problems, clearly expressed at the third SBI 24 meeting, characterize the GEF's governance structures, procedures and practices. The first relates to the ineffective acknowledgment of the UNFCCC's guidance in favour of decision-making processes that are perceived as taking account mostly of financial concerns. The South insistently claims that this circumstance tends to overshadow other concerns, such as accessibility, transparency and predictability, although these are among the priorities in the guidance given by the COP to the GEF. The second problem is the substantial under-representation of countries in the GEF's decision-making procedures. In theory, the constituencies (the GEF Council members) must represent the interests of their constituents. In practice, this frequently does not happen, especially when constituencies are not interest groups: in the GEF, the constituencies are largely geographical and may thus encompass countries with conflicting interests (for example, Australia and the Pacific Islands). And whilst rich countries have their voice "whether they sit at the table or not" (Muller 2007a, p. 18), weaker ones can have their interests recognized only if they 'sit at the table', that is, only if they have procedural safeguards. In other words, developing countries rely only on the good will of their representatives, whereas in the AF, they have their voice heard through a 'one-country-one-vote' voting procedure.

At SBI 24, the negotiations became deadlocked and produced profound distrust between the two blocs that could have greatly undermined subsequent negotiations on the AF and even derailed the evolution of the entire climate change regime. Fortunately, and rather surprisingly, the mistrust dissolved at SBI 25 held in Nairobi in December 2006, where a breakthrough was achieved in the negotiations on operationalizing the AF: decision 5/CMP.2, which defined the most important features of the AF governance system, as specified in the Introduction. In Nairobi, in fact, the apparently insuperable opposition between the developed and the developing countries was resolved thanks to the more constructive attitude taken by both factions, which established a climate of trust and ultimately reconciled their different objectives by concentrating on the overarching principles, modalities and governance of the AF before addressing its institutional arrangements. This positive attitude was also favoured by a number of informal intersessional meetings during which the industrialized countries' participants knew and acknowledged the views of the developing country representatives.[12] Subsequent SBI meetings are instead less relevant to the discussion here because they have simply operationalized the details of the AF in a climate of collaboration between Parties.

Consequently, it is crucial to understand and interpret the role of justice in the Bonn and Nairobi sessions: specifically, it is useful to apply the lens of procedural and distributive justice in order to determine whether these meetings evidenced that the conduct of the subjects involved was inspired by, or consistent with, the fairness and equity criteria defined, and, if so, whether observance of these criteria favoured the changing attitudes of Parties and eventually the success of the Nairobi negotiations. What is meant by 'interpretation' is, on the one hand, the contextualization of such criteria in order to elucidate their specific meanings and implications, and on the other, the appreciation and clarification of what the application of these criteria would entail, an understanding close to that of the philosophy of social sciences, according to which social constructs require consideration of the meanings and intentions of social actors.

[12] For instance, the Fellowship Programme of the European Capacity Building Initiative (ECBI: www.Eurocapacity.org) made this exchange of views possible and ultimately produced an influential IIED/ECBI Opinion Paper on the management of the AF (Sopoaga et al. 2007).

3.1 The failure: SBI 24[13]

3.1.1 SBI 24 first meeting—plenary 18/05/06

At the beginning of the first SBI 24 meeting, the Philippines,[14] seconded by other developing countries, demanded the deletion of item 6b from the Provisional Agenda, claiming that "there's no financial mechanism of the Kyoto Protocol". Austria, on behalf of the EU and its member states, announced that it could "accept the proposal of the Philippines", while the Norway delegate said that he did not understand the reasoning behind the proposal and demanded an explanation. The Philippines answered that "…there is no financial mechanism under the Kyoto Protocol… item 6b is misleading, tendentious, inaccurate and it is going to prejudge the discussions".

This disagreement concerning an item on a provisional agenda, an uncommon occurrence in UNFCCC negotiations, testifies to the general "climate of distrust" (Muller 2006, p. 1) that characterized the Bonn AF negotiations. The developing countries, by demanding the deletion of item 6b, revealed the suspicion of the South towards the GEF, as openly expressed by Nigeria; by claiming that a financial mechanism under the Kyoto Protocol did not yet exist, they sought to prevent the implicit selection of the GEF. The EU emerged as the bloc antagonistic to G77 and China on governance of the AF, even though it conceded that item 6b should be deleted.

The first SBI 24 meeting was the prelude to the clash between the developed and the developing countries which doomed the Bonn negotiations to failure, as far as the AF was concerned. Ultimately, one gains the impression from this initial skirmish that the multiple close support formally expressed by other developing countries for the proposal by the Philippines was intended to evince their determination to insist on every possible occasion that they must be included in decision-making on sensitive issues and have their positions acknowledged, as demanded by fairness criteria of Inclusion and Participation. Neither explicit general concerns on distributive justice nor specific reference to operational equity criteria emerged during this meeting. However, I believe that part of the reason for its failure was the unexpressed fear of the developing countries that a GEF-controlled AF would have produced unfavourable outcomes for them: that is, it would have been unjust also in distributive terms.

3.1.2 SBI 24 third meeting—plenary 19/05/06

The third meeting of SBI 24 was the prologue to the "tragic farce" (Muller 2007a, p. 9) enacted at the fifth meeting a few days later, where the two sides began to mark out the battlefield: the developed countries indicated the GEF as the entity that should manage the AF, basically for reasons of "minimization of transaction costs and complementarity with other funds", as Japan pointed out. The developing countries rejected this option: the Philippines, again supported by other developing countries, argued that "…the greatest risk

[13] In Sects. 3.1 and 3.2, the quoted sentences are the relevant negotiators' interventions during SBI 24 and 25 meetings, unless otherwise specified, as in the case of the contributions informally obtained from observers as made clear in Note 1, or of relevant points taken from other material. The use of these two latter sources will be clearly indicated.

[14] In these negotiations, the Philippines had been the representative (and, practically, the leading and most proactive actor—as acknowledged at the fourth SBI 25 meeting by Finland's delegate, who thanked "Ambassador Bernaditas Muller [the Philippines' delegate] who has been able to guide us with all her knowledge of articles and principles")—of the G77 and China group.

is that projects under the AF would have the same project conditionality of other GEF-funded ones. We would like to see the AF projects not under this kind of conditionality and the Fund manager should do exactly what the Parties stated it should do". The Philippines then added that "the further problem with the GEF is that developing countries, and especially LDCs, are not properly represented, the representation through constituencies is not truly democratic".

The core objection of developing countries in terms of procedural justice against the GEF as the AF's managing entity was therefore centred on their lack of recognition and participation in that body. As far as the Inclusion fairness criterion was concerned, the developing countries claimed that they were not properly represented in the GEF, because its governance structure was not democratic. For this reason, since they regarded AF funds coming from CERs of the CDM as their own money, they did not want the GEF to handle them, also because countries that did not ratify the Kyoto Protocol (that is, the United States) and therefore could not participate in CDM projects, had great weight in the GEF's governing body, the Council. There would therefore be, in the developing countries' view, an objective misrepresentation largely biased in favour of richer countries. Moreover, the AF, the developing countries further argued, should be outside the control of the GEF; otherwise, the most vulnerable countries would not be given priority in use of the AF because of their limited mitigation possibilities—as feared if the GEF's usual procedures and practices, summarized at the outset of Sect. 3, were applied. In other words, the GEF would be unlikely to respect the fairness criterion of Participation.

In terms of distributive justice, during this meeting, the developing countries repeatedly stressed that the AF must give priority to the weakest of them, as required by the equity criterion of Security. The developing countries insisted that the true spirit of article 12.8 of the Kyoto Protocol was the sharing among them, and with special regard to the most vulnerable of them, of the benefits of CDM projects, and hence that the AF disbursement practices should take this objective into account. Barbados and Tuvalu, in particular, stressed the vital importance of the AF for Small Island Developing States (SIDS), probably the most vulnerable group of countries, and therefore demanded that special attention be paid to their needs in management practices. Interestingly, Japan too affirmed that the AF should give priority to particularly vulnerable countries. It is also highly likely that the developing countries' demand that management of the AF be outside the control of the GEF was also driven by a widely shared imperative to ensure that the most vulnerable among them would have priority in accessing funds. This would fulfil the Security equity criterion, which otherwise would have been flouted.

This meeting eventually laid bare the rift between the developed and the developing countries on management of the AF and their preparation for the final battle: the ultimate concerns for both the North and the South were not the rules and procedures for governing the AF fairly, as stated by the SBI agenda, where consideration of justice would have been relevant, but rather the struggle to decide what the operating entity should be, an issue where power and negotiating skills were predominant.

3.1.3 SBI 24 fifth meeting—plenary 25/05/06

The objective of the fifth SBI 24 meeting was adoption of a draft decision on management of the AF for consideration at COP/MOP 2 in Nairobi. The *casus belli* of the forthcoming battle was the inclusion in article 3 of this draft decision of the word 'all'—requested by the Philippines on behalf of G77 and China and fiercely opposed by Austria on behalf of the EU—in relation to the possible managing institutions of the AF. This inclusion,

Box 1 SBI 24, Agenda Item 6: Financial mechanism (Kyoto Protocol): Adaptation Fund

Adaptation Fund

Draft conclusions proposed by the Chair

…..

3. The SBI invited relevant international institutions, including, among others, **[all]** those contained in the annex referred to in paragraph 2 above, without prejudice to any institution, to submit to the secretariat, by 4 August 2006, information ….

…..

Paragraph 3 of Draft conclusion proposed by the Chair (FCCC/SBI/2006/L.18) [in brackets and bold the word 'all' requested by the G77 and China]

according to most standpoints, "apart from lending some more emphasis, made no substantial difference" (Muller 2006, p. 1). However, the developing countries underlined the "value added" of 'all', and the fear that its rejection would signify a "hidden agenda" of the North (Box 1).

The Chairman, after expressing his perplexity, and despite the developed countries' non-acceptance of the inclusion of the word 'all', adopted the draft decision including it and a statement by the G77 and China, listing all the institutions that could manage the AF. Austria, on behalf of the EU, expressed its disappointment in regard to the decision adopted and to the included statement by the G77 and China, which was "not the understanding of the SBI, but of a group of countries".

The positions of the different actors were quite clear. As anticipated, on the one hand, the developing countries expressed their non-acceptance of the GEF as the operational entity of the AF; on the other hand, the developed countries advanced the opposite claim. This sharp juxtaposition of interests, not eased by the rather ambiguous attitude of the non-aligned countries and probably also exacerbated by the conduct of the SBI Chairman, led to the final showdown at the fifth meeting of SBI 24. The pretext was somewhat futile, the inclusion of the word 'all', but it nonetheless disclosed the deep reciprocal distrust between the developed and the developing countries. In this regard, of considerable interest is the caustic final comment made by Saudi Arabia, the last country to take the floor and which wished to "highlight to the Plenary and to our partners and to everyone here, how very very constructive this has been for building trust between Non-Annex I and Annex I countries".

The usual first casualty of conflicts of this kind is rational and attentive consideration of causes and possible solutions, among which issues of justice should play a primary role. In fact, in this case too almost no claims concerning the importance of justice, let alone for compliance with any fairness and equity criterion, were made: only the Philippines demanded fairness in the choice of the institution to manage the AF. But it seemed a rather formalistic and rhetorical claim, whereas all efforts were devoted to the trial of strength between the two sides.

3.2 The success: SBI 25

Some factors helped heal the rift between G77 and China and the EU, restore mutual trust between the two groups, and transform the patent failure of SBI 24 into the encouraging success of SBI 25 that led, as said, to adoption of the important decision 5/CMP.2, whose draft was in fact agreed at SBI 25 fourth meeting, on management of the AF. One element that proved useful was the closing of negotiations at 6 pm, which enabled smaller delegations to participate actively in every session and introduced a basic element of

procedural justice, broadly understood, which created a more collaborative approach to the negotiations. Moreover, the developing countries came to Nairobi with a common position on management of the AF, already known by the EU: the two counterparties, in fact, had exchanged views at a number of informal seminars held after the Bonn meetings. For instance, the Fellowship Programme of the 'European Capacity Building Initiative' (see Note 12) advanced a proposal concerning management of the AF which suggested that the focus should not be on the choice of the entity, but rather on defining the architecture of the fund's governance system, which would have to be guaranteed whatever institution was selected.[15]

These were not the only reasons for the positive results of the Nairobi meetings, but they favoured the creation of a positive climate, an "astonishing change in 'atmospheric chemistry'" (Muller 2007a, p. 10), which greatly influenced the outcomes of negotiations. Nairobi, in fact, started off on the right footing: from the outset, both blocs expressed a number of reassuring acknowledgments of the importance of moving on the operationalization of the AF. However, the substantive issues concerning management of the AF were dealt with at the SBI 25 meetings.

3.2.1 SBI 25 third meeting—plenary 8/11/06

At the third meeting of SBI 25, Parties made their statements on the questions concerning the management of the AF. According to the Philippines, "the management of this Fund should be fully under the authority and guidance, and be accountable to the COP/MOP. The governance structure should reflect the main sources of funding for the AF, that is the share of the proceeds from CERs activities under the CDM". Further, "G77 and China would also like to reach agreement on the modality for the AF that would fully reflect the spirit in which article 12.8 of the Kyoto Protocol was negotiated and adopted, and should serve the purpose to assist developing country Parties particularly vulnerable to the adverse effect of climate change to meet the cost of adaptation. This Fund should meet the full cost of adaptation, and should be flexible enough to take into account the interest of participating countries". Finland, on behalf of the EU, attached great importance to the negotiations on the AF and acknowledged "the special features of the AF financed by the share of the proceeds", and its focus on "particularly vulnerable developing countries and their needs".

At this meeting, therefore, the discussion shifted from the frustrating 'GEF non-GEF' struggle of SBI 24 to a more productive search for common principles, rules and procedures for governing the AF. Hence, considerations of justice returned to centre stage. In fact, the Philippines' claim, largely supported by other developing country Parties, that the AF's management should be under the authority and guidance of the COP/MOP, where weaker countries would have greater recognition than in the GEF, was in line with the Inclusion criterion of fairness. Furthermore, the request that the management of the fund should take account of the interests of participating countries, that is, those most vulnerable to climate impacts, responded to the Participation criterion of fairness, which requires that every subject must be able to make its priority count. The requirements of this criterion were also recalled by the EU when it demanded that the AF should respond to developing

[15] This architecture is based on two principles: (i) the AF's decision-making process should be flexible, transparent, straightforward and balanced in order to reflect the specific needs of the developing countries; (ii) funding should be reliable and adequate and cover the full cost of adaptation (Muller 2007a).

countries' needs, and indirectly by Norway when it clarified its agreement on the country-driven approach.

It is interesting that the two antagonistic blocs of countries, the South and the North, notwithstanding their different objectives and characteristics, converged on the Participation criterion for the first time in the negotiations on the AF. They thus acknowledged that the possibility for weaker countries to state their priorities and vulnerabilities and consequently, to ground management of the AF on a country-driven approach, would increase the sense of belonging to a community comprising all the actors involved and that this would greatly improve the trust between them and eventually favour new effective agreed initiatives.

As far as distributive justice is concerned, the reported statements of the Philippines, acknowledged by Finland on behalf of the EU, recognized the core of the equity criterion of Security, namely that adaptation funds should privilege weaker countries because of their more limited institutional and social possibilities and capacities. Tuvalu also claimed that Annex I Parties had an obligation to assist the developing ones, as stipulated by the equity criterion of Responsibility. In sum, it seems evident that the main interest advanced at this meeting by the developing countries, and largely recognized by the developed ones, was that the AF be structured in such a way that the richer countries effectively provide funds to particularly vulnerable ones. And this was broadly in accordance with the two equity criteria put forward.

3.2.2 SBI 25 fourth meeting—plenary 14/11/06

The co-Chair of the AF Contact Group—established at SBI 25 third meeting to propose a draft decision for consideration at COP/MOP 2—opened this SBI final meeting by reporting on its work. The main achievements were the definition of a number of principles and modalities for the management of the AF, and the conclusion that the membership of its governing body should be from Parties to the Kyoto Protocol on a one-country-one-vote basis and with a majority of Parties not included in Annex I to the Convention.

The SBI Chairman then adopted the draft decision.[16] This was the meeting held to celebrate the result achieved and, mostly, to express mutual appreciation of the goodwill of partners, which again was largely centred on common acknowledgement of the imperative that the developing countries should be able to specify their priorities and interests in line with the Participation criterion of fairness. The Philippines also emphasized that the agreed governance structure of the AF should be coherent with the objective that CDM revenues are of most benefit to developing countries particularly vulnerable to the adverse effects of climate change. Here, the importance of the Security criterion of equity was evident.

4 Final considerations

The first consideration refers to the much greater contribution made by the developing countries to the meetings observed. A large number of them took the floor to express their positions, and this testifies to their deeper concern and involvement. This was not only a matter of interest where recipients have more incentive than donors. For most of the South, climate change is a matter of sheer survival, and the financing of concrete adaptation

[16] A few days later, the tenth meeting of COP/MOP 2 officially adopted this draft decision (decision 5/CMP.2, whose main features are summarized in the Introduction).

actions in order to prevent or reduce climate impacts became a crucial form of defence. For the industrialized world, climate change is still an environmental problem, albeit a very serious one, and its emotional temperature is consequently milder. Moreover, to be emphasized is the close coordination among the developing countries, whose cohesion, expressed through the broad support invariably given to the Philippines, their representative during the SBI 24 and 25 negotiations, confirms their capacity to aggregate around a proactive leader in order to promote a common and stronger position. Furthermore, this effort to achieve jointly the common goal of a fairer and more accessible management of the AF ultimately enabled the developing countries to set aside their often dissimilar interests, values and characteristics and to become a homogenous negotiating group promoting a common interest.[17]

In the ethical perspective of this article, the most prominent features of procedural justice that, according to the developing countries, should characterize the AF are, first, that they should be included in its governance structure and in the formal negotiating processes determining it, as requested by the recognition principle entailed by the Inclusion criterion of fairness; and, second, that the AF, in allocating funds, should acknowledge, and be coherent with, their vulnerabilities and particular needs, in line with the Participation criterion. No Parties, instead, ever invoked the Assistance criterion.

At SBI 24 meetings, the issues at stake were indeed the recognition and participation of the developing countries in both negotiations on the AF and its management. On the one hand, the developing countries argued that their inclusion and involvement were essential because they considered the AF's money to be their money, generated through the CDM mechanism on assets based in their territories. On the other hand, the developed countries did not concede the point, citing the supposedly greater efficiency of the GEF in managing funds for adaptation, and thus implicitly disavowing the calls for procedural justice made by the developing countries. The demand for recognition and participation was the element that both cemented the developing countries bloc together and opposed it, in a climate of reciprocal suspicion, against the Northern one. In the light of the foregoing analysis, it is possible to argue that the developing countries' distrust partly derived from the non-acknowledgment by the developed ones of their needs in terms of procedural justice, namely their exigencies of recognition and participation in the GEF, the financial entity indicated by the developed countries for management of the AF. The choice of SBI 25 to operationalize the AF under a different governing body directly answerable to the COP/MOP, where the developing countries are incorporated on a one-country-one-vote basis and with a majority of Parties not included in Annex I to the Convention, greatly augmented their recognition. Moreover, the architecture adopted dissipated the developing countries' fear of under-participation, because the governing body envisaged for the AF made it possible for them to promote their real adaptation priorities and to specify their most urgent vulnerabilities. In other words, acknowledgment of the Inclusion and Participation criteria of fairness produced a change in the attitudes of Parties and favoured the success of the Nairobi negotiations on governance of the AF, a success that ultimately came about because of broad acknowledgment of procedural justice issues which bridged the North–South divide.

All in all, procedural justice played a quite prominent part in both the Bonn and Nairobi meetings on the AF. Its non-observance and the consequent neglect of the participation and recognition demanded by the developing countries in management of the AF reinforced the

[17] Interestingly Gupta (2010, p. 646), points out that in the period in which these negotiations were carried out, despite the serious internal differences, the G77 and China group "continued to behave as one actor".

misgivings that eventually derailed SBI 24. On the other hand, the leading role that concerns of procedural justice acquired in Nairobi was one of the main reasons for the success of the Kenyan AF negotiations. In fact, the choice of operationalizing the AF under the COP/MOP, and not under the GEF, granted the developing countries the right to participate on grounds of equality sanctioned by the one-country-one-vote rule with a majority of Non-Annex I Parties. Further, the governance structure envisaged also gave the South the right to be recognized in terms of its specific needs and vulnerabilities and guaranteed the deeper commitment of richer countries to effectively assisting weaker ones by means of adequate and predictable funding. Procedural justice thus had first a negative and then a positive influence on the development and outcomes of the negotiations on the AF. Fortunately, in fact, actors were able to understand the detrimental role that the non-recognition of procedural justice in the management of the AF had played in Bonn, and their acknowledgement proved to be a major factor in the success of the Nairobi negotiations.

Quite unsurprisingly, little room was explicitly given to distributive justice in the meetings observed. However, very apparent was the implicit claim made by the developing countries that emphasized the financial needs of particularly vulnerable countries. This appeal demonstrated the profound awareness among the countries of the South that their scarce institutional and social capacities, coupled with their greater physical vulnerability, undermined their adaptive capacity and that justice demanded that this circumstance be compensated for by more substantial and privileged access to funds raised for adaptation, according to the inner meaning of the Security criterion of Equity. Also interesting is the reiterated request that the AF be managed in accordance with the genuine spirit of the CDM as defined by article 12.8 of the Kyoto Protocol, so that allocation practices share the benefits among developing countries with particular regard to the most vulnerable ones. More generally, the CDM seems to stem directly from the principle of 'common but differentiated responsibility'. It, in fact, intends to establish a mutual relationship between the developed and developing countries on the basis of their different responsibilities and vulnerabilities and to articulate them into differentiated commitments and rights which are ultimately coherent with the spirit of distributive justice expressed by the equity criteria put forward. These provisions, in fact, can be inscribed in the body of liberal, broadly egalitarian, theories of justice—which provided the theoretical basis for the development of the distributive side of the ethical arguments of Sect. 2—that have a 'tendency' to equality as far as both donors and recipients are concerned and that aim eventually to improve the conditions of the badly off. Furthermore, the developing countries maintained that an AF governance structure effectively able to raise funds would have to differentiate among the contributions made by the developed countries, as envisaged by the Responsibility criterion of equity.

It is thus possible to argue that the negotiations on the AF evinced that an aspiration to distributive justice, though not explicitly demanded, but to some extent largely acknowledged, characterized both blocs of countries and that this common ground favoured the definition of a proper governance structure for the AF and eventually the success of SBI 25.

Ultimately, it seems that this achievement left a valuable legacy. In fact, the developed countries, in agreeing with the developing ones that the AF should be managed according to some of the most pressing ethical concerns of the South, implicitly admitted their larger responsibility for climate impacts and their willingness to support the developing world in dealing with the adverse effects that their behaviours contributed to creating. As a matter of fact, climate negotiations are an evolving game, and new achievements often testify to successful attempts to metabolize the theoretical concepts debated: in this regard, the

management of the AF, defined at SBI 25, COP 12-COP/MOP 2 and finalized at COP 13-COP/MOP 3, seemingly suggests that the North is beginning less forcefully to oppose contributions for climate impacts based on responsibility.

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