

# Principled Pragmatism in Climate Policy?

## The EU and Changing Practices of Climate Justice

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This is a paper written by Franziskus von Lucke and presented by Thomas Diez at the 2019 EUSA Sixteenth Biennial Conference, 9-11 May 2019, Denver, Colorado. We had initially planned (and promised) to write a joint paper that expands on the question of mutual recognition and the EU in the climate regime, but for various reasons we have not been able to do so. The present paper is a draft version of a forthcoming GLOBUS working paper – comments are most welcome.

### Abstract

Climate change constitutes one of the most pressing problems of global justice. However, despite the recent success of the international negotiations embodied in the Paris Agreement, most scientists and activists agree that the adopted measures are not adequate or ‘just’ considering the magnitude of the problem. To make matters worse, the announced withdrawal of the US from the agreement threatens to further erode the path towards a sustainable and fair future. On the contrary, the European Union for most of the time has presented itself as a strong advocate for progressive climate action and has been called a climate vanguard or ‘green normative power’. The aim of this paper is to critically assess the EU’s role concerning climate change from a perspective of global political justice. Building on a tripartite theoretical conception of justice, consisting of ‘non-domination’, ‘impartiality’ and ‘mutual recognition’, it inquires whether the EU’s climate strategy and approach to the international negotiations indeed can be considered just and which conceptions of justice have been central. The paper finds that after the failed negotiations in Copenhagen in 2009, the EU has increasingly shifted from mainly relying on strategies linked to an impartial understanding of justice towards those that resemble mutual recognition and non-domination. While this shift was in parts necessary to move forward the international regime, it eventually could become detrimental concerning the quest for global climate justice.

### Keywords

EU, climate change, global justice, ethics, negotiations, environment

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## 1. Introduction: The EU as Leading Navigator in the ‘Perfect Moral Storm’?

Arguably, climate change is one of the most far reaching and urgent problems of global justice (Gardiner 2004a; Caney 2005, 2010; Heyward and Roser 2016). Fittingly described by Stephen Gardiner as the ‘perfect moral storm’ (Gardiner 2006), it affects individuals and collectives around the globe and particularly poses questions of distributive and inter-generational justice. Thus, on the one hand climate justice pertains the relationship between developed and developing<sup>1</sup> countries and the worlds wealthy and poor and raises questions about redistributing global wealth and opportunities for development (Sachs 2014; Okereke and Coventry 2016; Gardiner 2004b: 39). On the other hand, the long residue time of greenhouse gas emissions (GHGs) in the atmosphere make it a problem of many different generations to cope with (Page 2006; Meyer 2011). Both dimensions of climate justice call for far reaching efforts to mitigate GHGs, adapt to the unavoidable effects of climate change and to compensate the most affected for occurring loss and damage (Moellendorf 2015).

Global political approaches such as the UNFCCC, the Kyoto Protocol, the Green Climate Fund or the recent Paris Agreement undoubtedly constitute steps into the right direction to address the above-mentioned issues. Yet, climate scientists, activists and scholars of global justice agree that they are only a drop in the ocean when it comes to stabilising global temperatures and accounting for the complex justice problems associated with climate change (Gardiner 2004b; Caney 2016; IPCC 2015; Greenpeace International 2018). Moreover, even though justice considerations have played some role in the international negotiations, they have often taken the back seat as soon as they interfered with more central economic or political concerns (Gardiner 2004b). To make matters worse, even the largely deficient attempts to govern the climate problem on the international level as well as more ambitious domestic measures to curb GHGs increasingly have come under attack. Examples are the roll back or weakening of climate regulation in the US (Popovich *et al.* 2018), the stalling phase out of (dirty) coal power plants in some European states (Watson 2014; Climate Analytics 2017) and the announcement of the Trump administration to withdraw from the Paris Agreement (von Lucke 2017).

In this dire situation, the European Union (EU) appears to be one of the few actors who have consistently tried to pursue more ambitious climate policies and to uphold a commitment

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<sup>1</sup> I am aware of the problems associated with this distinction, yet, due to its widespread use in the climate justice literature and the political debates about climate change it is difficult to avoid it altogether.

to questions of climate justice (Wurzel and Connelly 2011b; Schreurs and Tiberghien 2007; Falkner 2007; Oberthür and Roche Kelly 2008):

‘We Europeans are the world leaders on climate action. It was Europe that brokered the first-ever legally binding, global climate deal. It was Europe that built the coalition of ambition that made agreement in Paris possible’ (Juncker 2016).

As this quote from Jean-Claude Juncker’s 2016 state of the union address indicates, since climate change became a matter of international debate, the EU has presented itself as one of the strongest advocates for progressive climate action. Beyond ambitious emission reduction efforts, the EU has given itself the appearance of not primarily looking after its own selfish interests but instead striving for progressive and multilateral solutions to the climate problem, which also further global justice. Thus, Europe was instrumental in establishing the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement and also pushed for provisions that acknowledge the different responsibilities of developing and developed countries (Harris 2002b; Dröge and Geden 2015, 2016). In addition, in the academic debate the EU has been described as a political actors ‘sui generis’ and as a ‘civilian’ or ‘normative power’ (Manners 2002; Diez 2005; Sjørnsen 2006a; Whitman 2011) that acts based on a set of common universal values (EU 2007: 2) and transcends egoistic power politics or the sole drive for economic gains (Manners 2002: 240; Diez 2005: 615, 2012). While several scholars have challenged this assumption (Hyde-Price 2006; Scheipers and Sicurelli 2007; Pace 2009; Puetter and Wiener 2007), others have claimed that the normative influence might be particularly strong concerning environmental politics (Lightfoot and Burchell 2005; Falkner 2007).

Consequently, the EU’s ambitious record in the climate negotiations and its adherence to normative considerations seem to predestine it to play the role of a ‘green normative power’ (Falkner 2006, 2007). Or perhaps even more fittingly, a ‘just power Europe’ that navigates the world through the perfect moral storm sparked by climate change. Having said this, the picture becomes more complex when we look at the underlying theoretical and philosophical debates on justice, as well as on the actual political processes. On the one hand, apart from different approaches to climate justice, the idea of ‘global political justice’ itself is essentially contested (Gallie 1956). It cannot be pinned down to an all-encompassing definition (Eriksen 2016), which makes it difficult to ascertain a coherent move towards global climate justice. On the other hand, a closer look at the EU’s approach to climate change reveals that even though

questions of justice have played some role, they never have been the sole motivation for EU policy (van Schaik and Schunz 2012). Moreover, upon closer inspection, the EU's climate record is more ambiguous (Ahrens 2018) than one might expect.

The aim of this paper is to shed light on these theoretical and practical issues and to critically assess the EU's contribution to global climate justice. It does so by discussing two interrelated questions. Firstly, which (changing) conceptions of justice have played a role in the EU's climate strategy? Secondly, has the EU been able to influence the international negotiations towards a (particular) just approach towards climate change? While questions of effectiveness concerning climate policies play a role as well, the paper is primarily an attempt to go beyond these debates and instead provide an alternative, ethical assessment of the EU's role in the climate regime.

The paper is structured as follows. The *next section* briefly discusses the existing literature on climate justice and makes the case for extending it with a novel tripartite conception of global justice in order to sharpen its procedural and political dimension (Eriksen 2016; von Lucke 2017). Thereafter, *section three* looks at the formative stages of the international climate regime and argues that at the beginning the EU mainly pursued a strategy that theoretically resembled justice as impartiality. *Section four* then analyses the crucial period between the failed climate summit in Copenhagen in 2009 and the apparent resurrection of the regime in 2015 during COP-21 in Paris. It identifies a far-reaching transformation of the EU's approach towards climate change, which now rests much more on mutual recognition and partly non-domination. While this has contributed to saving the climate regime, it also comes with a set of problems, which ultimately could seriously diminish global climate justice.

## 2. Theory: Towards a Political Understanding of Climate Justice

Not long after climate change became a more important concern in political debates in the 1980s, several scholars, mostly coming from political philosophy and theory, began to discuss climate change from an ethical perspective and have since fuelled a growing literature on climate justice (Rose 1990; Shue 1993; Gardiner *et al.* 2010; Heyward and Roser 2016).

### 2.1 Key Climate Justice Issues and Principles

One key observation is that climate change poses a problem of *distributional* (in)justice – also linked to concepts such as compensatory and corrective justice (Ikeme 2003: 195, 201) –, which particularly pertains to the relationship between developing and developed countries and their (relatively wealthy or poor) inhabitants (Sachs 2014; Okereke and Coventry 2016; Caney 2005:

749). The distributional justice problem stems from the observation that states and individuals have contributed to global emissions differently, while at the same time are unequally affected by climate change (Gardiner 2004b: 39). The wealth of most developed countries is based on industrialisation, which to a considerable extent rests on burning fossil fuels (Okereke and Coventry 2016: 2–3). Thus, this group of countries has overused its ‘fair share’ of the ‘atmospheric sink’ (Page 2013: 233). Based on this ‘historic responsibility’ (Schüssler 2011; Meyer and Roser 2013) and their wealth as well as technological expertise (Caney 2010: 205, 2005: 752; Shue 1999: 534; Gardiner 2004a: 579), these countries should be primarily held responsible for cleaning up the mess. Alternatively, most developing countries have released much less GHGs, do not have the means to stop climate change (Gardiner 2004a: 584–585) and are more harshly affected by its effects (IPCC 2015: 15–16). This has led scholars to argue that political answers to climate change have to differentiate between ‘luxury’ and ‘subsistence emissions’ (Shue 1993). While developed countries hence should bear a greater part of the burden, political solutions need to integrate ‘antipoverty principles’ (Moellendorf 2015: 177) and ought to allow developing countries a ‘right to develop’ (Moellendorf 2015: 178).

Beyond that, climate change also is a problem of *intergenerational* (in)justice (Page 1999, 2006; Gardiner 2006; Caney 2005: 749), which stems from the considerable delay between the release of GHG emissions, and the unleashing of harmful effects (Gardiner 2004b: 29). Thus, the climatic effects experienced today have been caused by past generations, while present generations create the – most likely much more far-reaching – problems for the future (Caney 2005: 749; Moellendorf 2015: 174). This also means that current generations will have to shoulder most of the immediate costs of climate mitigation, while (possibly more wealthy) future generations will benefit (Moellendorf 2015: 174; Gardiner 2004b: 30). Finally, and most problematically from a political perspective, distributional/intra-generational and inter-generational climate justice often directly oppose each other when it comes to finding political solutions. Given current economic conditions, saving future generations by radically curbing today's emissions would seriously curtail economic development – even if one assumes that concepts such as ‘green economy’ or ‘ecological modernisation’ (Hillebrand 2013) could soften the blow somewhat. Unfortunately, this effect could be particularly pronounced in fragile socio-economic contexts in the Global South (Moellendorf 2015: 177–178; Okereke and Coventry 2016: 3–4; Ojha 2009).

Resulting from this conundrum, the literature has developed a range of justice principles to guide the distribution of emission allowances and the allocation of the costs for mitigation, adaptation and loss and damage. The most prominent one is the ‘polluter pays principle’ (PPP)

(Caney 2005: 752; Page 2013: 237), which basically holds that the ones responsible for climate change ought to pay for abatement measures (Caney 2005: 754). The ‘beneficiary pays principle’ (BPP) (Page 2013: 240) goes a in a similar direction and demands that the ones that benefitted most from the actions that have caused climate change should bear the majority of costs. It carries the advantage that it is not necessary to retrospectively establish a direct link between past polluters and contemporary effects of climate change. A third option is the ‘ability to pay principle’ (APP), which has the advantage that it avoids ascertaining any direct blame for the causation of the problem and instead focuses on who could reasonably be subjected to pay for the solutions (Page 2013: 238; Caney 2010: 214).

## 2.2 From Non-Ideal Theory to Political and Procedural Justice

While the discussed literature has advanced our understanding of the justice aspects of climate change considerably, it runs the risk of neglecting the messy political realities that often are a far cry from the idealistic context in which these principles would work. Much of the climate justice literature does not primarily intend to aid an empirical analysis or to give concrete policy advice but rather constitutes a philosophical take on the issue (Zellentin 2015: 123). To overcome these blind spots, there is a growing debate on how to achieve climate justice in a ‘non-ideal’ world (Caney 2016; Heyward and Roser 2016; Gajevic Sayegh 2016). Starting out from this literature, one could argue that instead of primarily focusing on substantive forms of climate justice, the aim should be on the political and procedural dimension (von Lucke 2017; von Lucke and Diez 2018). Thus, trying to challenge the (unjust) rules of the (political) game that have led to and perpetuate global injustice (Eriksen 2016: 2–4; von Lucke 2017) ought to be a greater concern when discussing problems climate justice.

This is where the tripartite conception of global justice consisting of non-domination, impartiality and mutual recognition comes into play<sup>2</sup> (von Lucke 2017; von Lucke and Diez 2017; Eriksen 2016). The advantages of this theoretical perspective lie firstly in its avoidance of a single essentialist conception of what global justice ought to be. Instead, each of the three conceptions highlights specific aspects of justice that might be important for particular actors and issues around the world and allows for a differentiated normative discussion. Secondly, this dynamic conception of global justice can help us to better understand the political struggles and procedural aspects linked to the quest for global (climate) justice in a non-ideal world.

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<sup>2</sup> This conception has its roots in a broader collaborative EU funded Horizon 2020 research project called GLOBUS (<https://www.globus.uio.no/>). For a more thorough discussion of the theoretical approach see (von Lucke and Diez 2018; Eriksen 2016).

## 2.3 A Tripartite Conceptualization of Climate Justice

### Climate Justice as Non-Domination

Justice as *non-domination* (Eriksen 2016: 8–13), connects to neo-republican theory and its understanding of freedom as freedom from domination (Pettit 2010: 140, 1997; Lovett 2009; Shapiro 2012; Bachvarova 2013). The core idea is that states remain the key actors in the international realm and are central in causing but also in working against global injustices (Eriksen 2016: 11). However, not all states are equally powerful, be it in terms of economic, military, ‘soft’ or ‘normative power’ (Nye 2004; Diez 2005; Sjursen 2006b, 2006c). This can lead to problematic constellations in the international system, or international treaties not respecting the will and possibly the wellbeing of all states and their citizens in the same manner (Skinner 2010: 100). Yet, the conception of non-domination does not fundamentally challenge the existing system of states. Instead, it strives to alter it only so much as to guarantee a fair system of global governance and to avoid less powerful states from being unfairly affected by the actions or inactions of others (Eriksen 2016: 11–12). This could amount to strengthening the relative position of weaker states to prevail in international negotiations. Or it could mean to build coalitions between less powerful states or between those that are particularly affected by certain global problems to prevent unfair decisions and to challenge the domination of powerful states. Beyond that, it also entails to support international norms such as sovereignty or non-intervention, which aim at protecting weaker states from outside interference.

Transferred to climate change, a non-domination approach strives for practical solutions that respect the sovereign interests of all states but also include measures that reduce the gaps in the capabilities of weaker states and other ways to alleviate stark power differences. Such an approach would largely reject legally binding international treaties that determine states contributions in a top-down manner and hence limit their freedom and sovereignty. Instead, it would welcome non-binding ad-hoc international agreements (or no agreements at all but rather declarations of intent) that even though giving a general direction, would leave it to individual states to define their level of ambition to combating climate change. Another approach could be loose coalitions or bilateral agreements between some states that voluntarily decide to do something to abate climate change such as the Major Economies Forum (Major Economies Forum (MEF) 2009).

### Climate Justice as Impartiality

Theorising global justice in terms of *impartiality* (Kane 1996; Føllesdal 2000) is based on Kant, natural law theorists and other advocates of a universal understanding of justice or rights (Eriksen 2016: 13–18; Kant and Reiss 1991). It understands justice as a ‘context transcending principle’ (Eriksen 2016: 14) and stresses the necessity of neutral, universalist principles and institutions, which – at least in principal – can be considered just from the viewpoint of all involved parties. Contrary to non-domination, impartiality focuses not on states but on the rights and needs of individuals. Going beyond amending the existing system of states, impartiality means to actively transform or replace this system, to strengthen law-based orders to deter dominance and power inequalities as well as to eventually build a cosmopolitan community of individuals. In the long term, disputes in the international realm are to be decided by an impartial third party, which in practice entails to strengthen international institutions such as the UN or the International Criminal Court (ICC). In effect, this also means to interfere in the sovereign decisions of states, which hence could clash with the principle of non-domination. Extreme examples are the ‘responsibility to protect’ (Bellamy 2010) and resulting ‘humanitarian interventions’ (Holzgreve and Keohane 2003).

Looking at climate justice through the lens of impartiality means strengthening multilateral negotiations and ambitious supranational solutions. These would be based on the scientific consensus (e.g. IPCC recommendations) about adequate measures to stop climate change (hence determine emission reduction targets in a top down manner), be legally binding and also contain effective instruments to sanction non-compliance. Philosophically, such binding regimes would heavily rely on the existing climate justice literature and its principles to fairly cope with climate change. Due to the individualistic perspective inherent to impartiality, applying it to climate change also entails strengthening the rights of individuals. Examples are possibilities for judicial review and compensation for damages suffered or an expansion of refugee rights for people fleeing from climatic effects such as sea level rise (e.g. small island states inhabitants).

### Climate Justice as Mutual Recognition

The third conception of justice, *mutual recognition* (Eriksen 2016: 18-22; Schmidt 2007; Anderson and Honneth 2005, 2005), tries to overcome a core problem of impartiality, namely that norms are never universal but contested (Wiener 2007, 2008) and can become particularly problematic when transferred to different contexts (Wiener 2009). Likewise, it strives to avoid some of the problems arising from the Western or European bias in much of the literature on



moral philosophy (Hobson 2012). From the perspective of mutual recognition, justice is not a universal or neutral value that applies to all and in every context in the same manner but an inter-subjective category (Eriksen 2016: 20). What is just is not decided prior to the political struggles but directly in processes of deliberation among all affected parties (Eriksen 2016: 19; Young 2011). The aim is to create legitimate rules of procedure in order to increase the legitimacy of the resulting decisions. This also means that the decision-making procedures must consider the multitude of different identities and ensure that all voices are heard and recognised by each other. While ensuring improved procedures and strengthening weaker actors in part overlaps with non-domination, mutual recognition aims at a much broader spectrum of actors besides the state. This particularly pertains to otherwise underrepresented groups such as indigenous peoples or civil society actors (be it NGOs or corporations). Moreover, in contrast to the ad-hoc and voluntary solutions linked to non-domination, the change of procedures in line with mutual recognition have a more fundamental, institutionalized and binding character.

Approaching climate justice from the perspective of mutual recognition would primarily take aim at (fundamentally) reforming the negotiations and existing institutions. It would strive for establishing fair and inclusive negotiation and voting procedures (especially for non-state actors) at the COPs that accommodate for different viewpoints from different cultural contexts. A specific focus would lie on acknowledging voices from the Global South and especially from so far marginalized groups such as indigenous people, who are at risk of losing their cultural heritage due to climate change. Moreover, solutions in line with mutual recognition would have to recognize the different ideas and capabilities of all participants. A concrete example is the principle of ‘common but differentiated responsibilities’ (CBDR), which favours bottom-up approaches that merely give a broad direction but leave it to the different participants how to reach the main goal. Due to its focus on states, the CBDR could also be linked to non-domination. However, its institutionalized, long term and binding character point to a more fundamental change of procedures and hence towards mutual recognition. Ultimately, one can distinguish between two forms of mutual recognition. A weak one that although transforming processes of deliberation in order to better incorporate the voices of the most affected and foster a dialogue about appropriate solutions still focuses on states. And a strong one that also incorporates a broader spectrum of actors beyond the state.

The following *table 1* summarises the core traits of the three conceptions of justice when applied to climate change.

Dimensions of Justice and Climate Change (table 1)		
Dimension of Justice	Climate Change Application	Important Keywords/indicators
Non-Domination	<ul style="list-style-type: none"> <li>- Strengthen the capabilities of (weaker) states to alleviate power inequalities e.g. through coalition building, bilateral agreements</li> <li>- Avoid institutionalized supranational, top-down agreements, focus instead on ad hoc non-binding/voluntary solutions (Copenhagen Accord)</li> <li>- Avoid unfair domination of current and future generations</li> </ul>	Voluntary, non-binding, ad-hoc, states, domination, coalition, power inequality, bilateral, sovereignty
Impartiality	<ul style="list-style-type: none"> <li>- Universal solutions/principles to tackle climate change e.g. PPP, APP, BPP</li> <li>- Strengthen multilateralism (supranational, binding regimes) &amp; central role of (allegedly impartial) scientific expertise (IPCC)</li> <li>- Recognize role (rights and duties) of individuals/non-state actors, possibility of individual judicial review</li> </ul>	Universal, principles, multilateralism, supranational, legally binding, international, science, ambition, individuals, top-down, centralized
Mutual Recognition	<ul style="list-style-type: none"> <li>- (Fundamentally) reform procedures towards fairness, inclusiveness and transparency</li> <li>- Improve process of deliberation (support smaller delegations, voting procedures) and foster a dialogue about appropriate political solutions</li> <li>- Hear the voice and recognize different ideas and capabilities of a range of different actors (in the strong variant not only states but especially non-state groups)</li> <li>- CBDR (UNFCCC), NDCs (Paris)</li> </ul>	Procedures, process, recognition, transparency, dialogue, deliberation, difference, non-state actors, culture, inclusiveness, civil society, indigenous

### 3. The EU's Quest for a Binding Climate Regime

Starting out from the debates on 'normative' (Manners 2002; Diez 2005; Sjursten 2006a; Whitman 2011) or 'ethical power' Europe (Aggestam 2008) and the discussions on climate justice, the remainder of the article discusses firstly, whether and how Europe's climate strategy can be linked to conceptions of justice. Secondly, it inquires whether this has translated into a more (and particular) 'just' handling of the issue in the global climate regime (see also Falkner 2006, 2007; Vogler and Bretherton 2006; Groenleer and van Schaik 2007; Wurzel and Connelly 2011a: 14), thus, whether the label 'just power Europe' might be warranted. While it is difficult to univocally single out the EU's influence on the international negotiations or prove direct causal links, it is nevertheless possible to make a plausible case for the EU's contribution by carefully tracing back key developments. The investigation starts with the international negotiations on climate change in the 1980s but specifically focuses on the crucial period between COP-3 in Kyoto and COP-21 in Paris (2015).

Concerning the empirical material, besides secondary literature, the analysis rests a qualitative content/discourse analysis of key EU policy documents<sup>3</sup>. Thus, in a first step, I looked at the respective EU websites, conducted internet searches and followed up on mentions in the secondary literature to compile a list of central EU policy documents, decisions and milestones on climate change from the 1980s until 2018. In a second step, based on the operationalisation spelled out in *table 1*, I conducted the actual content analysis. The analysis was done manually, i.e. I did not conduct a quantitative analysis and did not use a specific software, which naturally limits the generalisability and reproducibility of the study. At the same time, this approach allows to better capture specific discursive representatives and their transformation over a long period and to link these to theoretical and normative conceptions. Thus, in order to detect to which conceptions of justice specific EU policies and negotiating positions corresponded, I relied on the frequency, intensity and position in the documents of certain indicators (see *table 1*) and arguments and backed up the findings based on the secondary literature. To further substantiate the findings, to gather background information, and to better understand the importance of certain policies and the underlying motivations, my colleagues and I conducted 15 semi-standardised expert interviews with EU officials and NGO/Think Tanks representatives. Most of the interviews were done with people working at the Directorate General Climate Action, the EEAS and the EPSC. The interviews took between 30-90 minutes and were conducted between April 2017 and March 2018. All interviews took place under the condition of anonymity and were not recorded. Instead, interviewers compiled key insights in semi-standardised tables.

### 3.1 From the EU's Damascene Conversion towards the UNFCCC

Contrasting the benevolent picture as 'green normative power', the EU only started to 'green' itself and to develop its actorness in environmental matters when US leadership declined in the late 1980s and hence left a power vacuum in this area (Falkner 2007; Wurzel and Connelly 2011a: 3, 5). This coincided with the advent of a range of trans-border environmental problems such as ozone layer depletion and climate change (Delbeke and Vis 2015a: 9) as well as with an institutional strengthening of the EU' competencies in environmental matters (Delbeke and Vis 2015a: 9–10). Subsequently, these developments anchored green issues at the core of EU policy and paved the way for its leadership position in the climate negotiations (Falkner 2007: 509; Council of the EU and EU Commission 1992: 4; Oberthür and Roche Kelly 2008: 36;

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<sup>3</sup> A list of the central analysed documents is attached in the annex.

Wurzel and Connelly 2011a: 5). From the beginning, the EU's approach to climate change was informed by a couple of broad norms such as multilateralism, international law, sustainable development, the belief in scientific findings and the precautionary principle (van Schaik and Schunz 2012: 173; Delbeke and Vis 2015a: 8). All of these largely correspond to an impartial understanding of global justice but also to the very foundational values of the EU itself. They are a first indicator that justice concerns to a certain extent have always been at the core of the EU itself, although of course other more mundane political interest were never absent. Thus, assessing the EU's climate strategy from the tripartite conception of justice is both an analysis of changes in policy but also inquiry into how the EU as an actor has transformed itself over time.

Based on this normative background, the EU emphasised the moral responsibility of present generations to quickly abate climate change to prevent serious harm for future people:

‘We must at all costs avoid an irresponsible attitude to the management of the environment and the use of natural resources which would irreversibly jeopardize the environment that we have inherited, to the detriment of our children and our children's children.’ (European Commission 1991: 2).

The EU from early on accepted the historical responsibility of developed countries (Carlarne 2010: 339) and the distributive dimension of climate change by repeatedly highlighting that ‘the industrialized world was mainly responsible for CO<sub>2</sub> emissions’ (European Commission 1991: 2) and had to go forward before developing countries could be enlisted. Based on these considerations and in accordance with its core norms, the EU favoured an international and obligatory solution to the climate problem. Consequently, one of the first climate related Communications of the EU Commission to the Council of the EU (‘Council’ in the following) emphasised the importance of an ‘international agreement for the future protection of the atmosphere’ (EU Commission 1988: 51) and mentioned the possibility of ‘the establishment of specific targets for limiting emissions of greenhouse gases’ (EU Commission 1988: 51).

In the ensuing negotiations about the UNFCCC, the EU hence pressed for ambitious, concrete and legally binding emission reduction targets for industrialised countries (Oberthür and Roche Kelly 2008: 36). It backed up this position with a pledge to stabilise its own emissions on the level of 1990 by 2000 (European Commission 1991). It thereby demonstrated its aspiration to ‘lead by example’ to push through a definitive political agenda that resembled justice as impartiality and which would become a cornerstone of its climate strategy (Oberthür

and Dupont 2011). Although it eventually failed to anchor binding emission reduction targets for industrialised countries into the framework, not least to strong opposition from the US (Harris 2001: 8; Vig 2013: 91), the EU was instrumental in setting up the UNFCCC in 1992 and managed to place some of its core beliefs on the agenda.

Thus, the 1992 Rio Declaration on the UNFCCC prominently mentioned the precautionary principle (UN 1992: 9) but also the central importance of scientific findings (UN 1992: 4). Together with sustainable development (UN 1992: 10), these points are closely linked to the intergenerational aspect of climate change (van Schaik and Schunz 2012: 175) and in general to the conception of justice as impartiality. In addition, although its key supporters were the G77 and China, it was in part due to the EU's influence that the final agreement included the CBDR (Carlarne 2010: 339; UN 1992: 2), which particularly takes into account the problem of distributional climate justice. Thus, even at this early stage, the EU's strategy did not exclusively rely on policies corresponding to impartiality – especially vis-a-vis developing countries –, even though it clearly aspired to make the climate regime as binding, comprehensive and ultimately ambitious as possible. The CBDR on the one hand resembles the weak version of mutual recognition. It recognises the different starting positions and cultural contexts of the participants, especially of developing countries, and leaves it to them to determine their fair share to the efforts to abate climate change. Moreover, it does so not in an ad hoc and voluntary manner but enshrines this norm directly at the core of the UNFCCC. On the other hand, the CBDR aimed at states, there were no clear enforcement rules, and it granted developing countries ample freedom not to do anything, which points to non-domination. Eventually it depends on its concrete implementation, which conception overweighs.

### 3.2 Expanding Leadership: The EU's Role in Establishing the Kyoto Protocol

EU-internally an approach that purely relied on top-down, legally binding and ambitious measures, hence embodying principles linked to impartiality, was not uncontested, which became particularly apparent during the eventually failed adoption of a carbon tax (Barnes 2011: 47, 51; Rayner and Jordan 2016: 1). This example shows the often diverging positions of the different EU institutions. Whereas the Parliament and the Commission often favoured policies resembling impartiality, the member state dominated Council of the European Union and the European Council regularly preferred less prescriptive policies that left more room for the sovereignty of member states (Rayner and Jordan 2016: 1).

Despite these internal struggles, internationally the EU continued on the route towards a supranational, binding climate regime. It hence was one of the leading actors in the

negotiations about the Kyoto Protocol that intensified in 1995 at the first Conference of the Parties (COP-1) in Berlin (Oberthür and Ott 1999; Yamin 2010). In line with a belief in the universalist applicability of scientific findings, the underlying approach of the EU at that time was to look at what climate scientists considered necessary to halt global warming and then to distribute the required emission reduction targets globally through a robust, top-down supranational regime (Interview 2018f). Thus, in 1996, the EU was among the first to clearly acknowledge the scientific findings of the IPCC and the necessity to limit global warming below two degrees, which for that time was an enormously ambitious target (Delbeke and Vis 2015a: 7): ‘Given the serious risk of such an increase and particularly the very high rate of change, the Council believes that global average temperatures should not exceed 2 degrees above pre-industrial level [...]’ (Council of the EU 1996). The EU here again openly based its position on intergenerational justice considerations and the precautionary principle and continued to emphasise that the industrialised countries had to go ahead (van Schaik and Schunz 2012: 175). It hence reiterated principles of global climate justice strengthening impartiality, which necessitated ambitious and binding international solutions, leadership by the EU itself but also included some disregard for different opinions on how to cope with climate change internationally (Schreurs 2002: 184).

Consequently, when the negotiations about the Kyoto protocol gained momentum in the run up to COP-3 in Kyoto in 1997, the EU insisted on legally binding and ambitious reduction targets for all industrialised countries and a status of ‘protocol’ for the agreement, which is the most binding option under international law (Dröge 2016: 24). Underlining its determination to lead by example, it even proposed a 15 per cent emission reduction by 2010 on the condition that other industrialised countries, most importantly the US, followed suit (Wurzel and Connelly 2011a: 4). At the same time, it backed up its earlier endorsement of the CBDR and an exemption of developing countries from definitive reduction targets for the time being, which was enshrined in the Protocol in the differentiation between Annex I and Non-Annex I countries (van Schaik and Schunz 2012: 179–180). The EU position hence resembled impartiality vis-à-vis the developed countries and concerning the ambition of a legally binding regime to implement the scientific consensus, but allowed for some degree of mutual recognition and non-domination when it came to the Global South.

Eventually, the EU was able to enshrine several of its key demands into the final text of the Kyoto Protocol. Most importantly, binding emission reduction targets for industrialised countries – the highest target of minus eight percent between 1990 and 2012 for the EU-15 and the second highest of minus seven per cent for the US – and the continued differentiation

concerning their respective duties between the developed and developing world as ‘Annex I’ and ‘Non-Annex I’ countries (UNFCCC 1998). At the same time, however, the EU had to make several concessions to less progressive countries (Oberthür and Roche Kelly 2008: 36; Gardiner 2004b: 33), which led the inclusion of the market oriented ‘flexible mechanisms’ of Kyoto that enabled actors from industrialised countries to offset their emissions through projects in developing countries (Wurzel and Connelly 2011a: 6; Schreurs 2002: 188). Beyond that, the final text specified forests as carbon sinks, which effectively allowed major industrialised countries such as Japan, Canada and Russia to increase their emissions (Schreurs 2002: 189). These instruments mainly pushed principles entailed in justice as non-domination, yet in a highly problematic way. Instead of preventing weaker countries from being harmed by the effects of GHG emissions or strengthening their role in the negotiations, they favoured the economic interests of powerful developed countries. Consequently, they considerably limited the impartial character of the protocol and also undermined its ambition to effectively address intergenerational and distributive justice (Gardiner 2004b: 25, 33).

### 3.3 The Limits of Impartiality: The Crisis and Resurrection of Kyoto

While Kyoto exemplifies the ambitions of the EU to develop a regime that consists of principles strengthening justice as impartiality, and beyond that constitutes a clear success to anchor some of these on the international level, it also highlights the problems of achieving a global solution that is effective, comprehensive and just (Dröge 2016: 24). Especially the conflict of goals between an ambitious and legally binding agreement (resembling impartiality and intergenerational justice) and the sparing of the developed countries due to distributive or corrective justice considerations (pointing towards mutual recognition and non-domination) gradually became problematic. Despite stemming from good intentions and legitimate practical constraints, it cemented a distinction or ‘firewall’ (Bodansky 2011: 4) between the two groups of states that soon began to undermine the effectiveness of the protocol and later the climate negotiations in general (Pauw *et al.* 2014: 1). It was one of the main reasons for the US refusal to ratify the protocol (Harris 2002a: 153; Kraft 2013: 112; Dröge 2016: 24) and the eventual defection of other major emitters such as Canada, Australia, Japan and Russia (Cléménçon 2016: 5). Ultimately, this seriously diminished the scope of Kyoto and complicated the negotiations for a successor agreement (Schreurs 2002: 200). In addition, the rapid growth of emerging economies such as China, India but also Brazil, South Africa or Indonesia increasingly rendered the distinction between developed and developing countries problematic (Hein 2013; Dröge 2016: 15–16).

Ironically, the failure of the US to ratify Kyoto – together with widened EU competencies on the environment (Falkner 2007: 509; EU 1997: 7; Burns and Carter 2011: 61; Barnes 2011: 48, 56) – also marked the beginning of the EU’s most visible and successful efforts to lead the international climate negotiations towards policies resembling justice as impartiality (Oberthür and Roche Kelly 2008: 36). Thus, based on its credible commitment to multilateralism, sustainable development and hence progressive and at least partly just climate policies, but also due to active bargaining strategies, the EU was able to salvage Kyoto that otherwise almost certainly would have been abandoned (van Schaik and Schunz 2012: 180; Oberthür and Roche Kelly 2008: 36; Wurzel and Connelly 2011a: 7). The EU secured the adoption of the implementation rules for Kyoto in the 2001 Marrakesh Accords and after Japan and later Russia finally agreed to ratify, the protocol finally could enter into force in 2005 (UNFCCC 2013; Wurzel and Connelly 2011a: 7).

From a climate justice perspective, the Kyoto Protocol was a mixed success. While its specific combination of measures reminiscent of impartiality, with some degree of both weak mutual recognition and non-domination, was able to address key problems, it also limited its scope and in the end it is debatable whether Kyoto was anything more than symbolic politics (Gardiner 2004b: 39; Page 2006: 104). Thus, concerning GHG reductions, the EU even overachieved its original Kyoto target with a reduction of 18.5 per cent between 1990 and 2012 (Delbeke and Vis 2015a: 13–15; Werksman *et al.* 2015: 99) – even though a considerable part of this reduction was due to the de-industrialisation of former Soviet countries and the economic recession at the end of the 2000s (Weidner and Mez 2008: 129; Schreurs 2002: 1–2; EEA 2010). Ultimately however, the protocol only accounted for a fraction of global emission – on paper at least 55 per cent (UN 1998: 18), yet due to states dropping out and flexible mechanisms in the end a lot less. Moreover, it was merely able to reduce this share of the world’s carbon output by about five per cent – depending heavily on the kind of measurement – between 2008 and 2012 relative to 1990 levels (Shishlov *et al.* 2015). At the same time, the emissions of large developing countries, especially China, rose ever more quickly, leading to a steady increase of global emissions and rendering the goal to limit global warming below two degrees increasingly unrealistic (Clark 2012; Dröge 2016: 15–16). In fact, in 2007 the EU Council of Environmental Ministers acknowledged that in order to reach the two-degree goal, global emission had to be reduced by 50 in 2050. This meant a reduction of 60-80 per cent for industrialised countries (Council of the European Union 2007), which was a far cry from what Kyoto would be able to achieve.



In the end, Kyoto entailed several aspects that furthered justice as impartiality. Thus, it emphasised scientific expertise, multilateralism, legally bindingness and largely accepted the historical responsibility of (most) developed countries thereby implementing some aspects of the polluter pays and ability to pay principles. Yet, because of the apparent inadequacies in its scope, the eventual impact on global emissions and its redistributive effects were marginal. This not only weakened its contribution to impartiality but also prolonged the unjustified domination of many individuals and states, especially in the Global South, through the continued overuse of the atmosphere by (mostly) Northern actors (Gardiner 2004b). Finally, even the elements of Kyoto that indisputably resemble justice as impartiality, do not challenge the status quo of a pluralist state based global order (Williams 2005). Thus, the Protocol largely failed to contribute to the ultimate goal of an impartial understanding of justice: a cosmopolitan international society, which places the rights of individual at its centre.

#### From Kyoto's Flexible Mechanisms to the EU ETS

Leaving aside the mixed impact of Kyoto on global emissions and climate justice, the inclusion of the so called 'flexible mechanisms' in the protocol laid the foundation for one of the most far-reaching EU measures to curb GHGs, the EU Emission Trading Scheme (ETS). Entering into force in 2005 (Barnes 2011: 48; Dröge 2016: 24; Meadows *et al.* 2015: 26), the ETS became the first major emissions trading scheme worldwide and cemented the EU's ambition to lead by example (Rayner and Jordan 2016: 7).

Justice-wise the ETS on the one hand entails aspects strengthening non-domination. Thus, after objections from the Council, in its first and second period (P1: 2005-2007, P2: 2008-2012) most emission allowances were not auctioned but given gratuitously to GHG emitting industries. This comes very close to what others have called 'grandfathering' i.e. basically allowing emitters to keep emitting on a high level without much added costs (Moellendorf 2015: 177). On the other hand, the ETS also contains some principles that could aid impartiality. Not least due to pressure from the often more progressive EP (Burns and Carter 2011: 61-62), in the periods P3-P4 (P3: 2013-2020, P4: 2021-2030) an increasing percentage of the allowances are supposed to be auctioned, hence increasing the incentive to actually reduce emissions. Moreover, the ETS already represents an EU-wide supranational – which in the future could be expanded beyond the EU states (Anger 2008) –, legally binding, and theoretically, if the price of the allowances can be stabilised, also effective<sup>4</sup> way to govern GHGs. By aiming at

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<sup>4</sup> So far, however, it has also been heavily criticised for failing to substantively reduce carbon emissions, mainly due to the low prices of emission allowances (Carbonmarketwatch 2017).

corporations, it also transcends solely state-focused instruments, which as well approximates impartiality. Finally, by using some of its revenues for climate projects and for a modernisation fund to alleviate the transition from climate harming industries throughout Europe (EU Commission 2016: 4; Rayner and Jordan 2016: 11) – which later was linked to the concept of ‘just transition’ (Interview 2018a, 2018f) – the ETS also contributes to mutual recognition.

#### 4. From Copenhagen to Paris: The End of Impartiality?

Apart from the development of the ETS, on the global scale the EU continued to further advance the UNFCCC negotiation process and stressed the ‘urgent need’ (Council of the EU 2007: 7) for a new global, and more encompassing climate agreement (van Schaik and Schunz 2012: 181). Yet, by that time, the shortcomings of Kyoto had become clear and the focus was on finding a solution to the more and more problematic distinction between developed and developing countries and the rising share of GHGs from quickly growing emerging economies (Findlay and Dimsdale 2009: 5; Olivier *et al.* 2015). Thus, the EU’s emphasis shifted away from measures in line with the predominately backward-looking PPP, towards those linked to the APP that considers future emission pathways and current capabilities and would require larger developing countries to mitigate. This already entailed a departure from principles linked to impartiality, as it was clear that an inclusion of developing countries would necessitate less strict reduction regulations and alternative political measures more in line with non-domination or mutual recognition. While the goal hence was to broaden participation in the climate regime, the EU kept recognising the difficult situation of developing countries and the importance of the CBDR (Council of the EU 2007: 9).

Eventually, the 2007 COP-13 in Bali and the Bali Action Plan marked a first success in this respect as emerging economies agreed to contribute some efforts – termed ‘nationally appropriate mitigation actions’ (NAMAs) – for emission reduction conditional on support from industrialised countries (UNFCCC 2009a; Hein 2013). Beyond that, the summit also placed adaptation measures more prominently on the UNFCCC agenda, which paved the way for the eventual integration of ‘loss and damage’ at COP-16 in Cancún 2010 (Dröge 2016: 26–27). In general, the growing importance of adaptive and compensatory measures, constitutes a move away from climate justice as impartiality because both measures do not impose top-down mitigation targets onto countries and are not directly linked to a universal temperature goal. Instead, they are primarily defined by the individual needs of countries or specific groups and hence constitute a more bottom-up approach. In principle, such an approach corresponds to mutual recognition, however, due to the still strong focus on states and the largely voluntary

and non-institutionalized character, in this instance it rather strengthened non-domination. While such less binding and bottom-up measures undoubtedly can contribute to global climate justice, they also weaken the aspects of the climate regime in line with impartiality. Ultimately, they can increase unfair forms of domination, especially if they come with a neglect of mitigation (Moser 2012).

#### 4.1 The Copenhagen Summit and the Defeat of the EU

Despite the gradual broadening of its position, the EU did not want to give up its main focus on mitigation and ambitious as well as binding measures for the new agreement (Delbeke and Vis 2015a: 7). Together with a range of developing countries it secured the recognition of other key parties in the climate negotiations that climate policy should be guided by IPCC findings and should be oriented towards the two degree goal (van Schaik and Schunz 2012: 181). To underline its role as leader by example before the important COP-15 in Copenhagen, the EU presented a much noticed Climate and Energy Package between 2007 and 2008 (Oberthür and Roche Kelly 2008: 41–42; Dröge 2016: 12). It contained the legally binding commitment to reduce EU emissions by 20 per cent until 2020 and a Renewable Energy Sources Directive that aimed at increasing the amount of renewables in the energy production to 20 % until 2020 (Delbeke *et al.* 2015: 55; European Commission 2009). The EU also pledged to commit itself to an even higher reduction target and to increase its support of developing countries if other industrialised countries followed suit (Wurzel and Connelly 2011a: 8). While this continued to relate to strengthen an impartial conception of justice, internally, the EU embraced a less binding bottom-up approach and hence furthered non-domination. Thus, the 2009 adopted successor of the 1998 ‘burden sharing agreement’, now called ‘effort sharing’, recognized that the ambitious and legally binding aims for climate abatement had to be balanced against continued sustainable economic growth and the relative capabilities of the member states (Rayner and Jordan 2016: 11; European Parliament and Council of the EU 2009: L 140/137).

Nonetheless, at the start of the COP-15 negotiations in Copenhagen, the hopes for an ambitious and legally binding agreement were high (Groen *et al.* 2012: 178; Mildner and Richert 2010). The EU trusted in the universal appeal of its proposed solution to the climate problem and that others would be convinced by its righteousness and good example (Groen *et al.* 2012: 178; Rayner and Jordan 2016: 11). However, the optimism soon faded when during the crucial phase of the negotiations the EU was not able to convince key actors of its vision and was effectively side lined by the US and the BASIC group (Curtin 2010; Wurzel and Connelly 2011a: 8). In the end, the participants failed to agree on a new treaty and COP-15

entered the history books as one of the greatest failures of international climate diplomacy in general and the EU's strategy in particular (Groen *et al.* 2012: 174). The only declaratory Copenhagen Accord endorsed further action to prevent dangerous climate change. Yet, it did not commit countries to a successor of the Kyoto protocol and lacked any specific or binding measures to abate climate change (UNFCCC 2009b), hence largely strengthening principles in line with non-domination.

The dynamics of the negotiations and the Copenhagen Accord itself both exemplified the problems of the EU to project its favoured approach to climate change, which mostly resembled impartiality, onto the international negotiations (van Schaik and Schunz 2012: 182). In fact, the adherence to an explicit legal structure enforcing binding and inflexible emission cuts onto states as well as a lack of transparency coupled with procedural shortcomings (Walker 2018: 7, 17; Monheim 2015) were key in preventing a comprehensive agreement. Copenhagen also underlined the problems of an impartial conception of climate justice that in fact never is accepted by all as universal. This becomes particularly problematic when it is tied to a degree of self-righteousness and deafness towards diverging solutions (Wiener 2007; Ingram 2016; Donnelly 2007), hence a lack of mutual recognition (Walker 2018). The growing importance of the BASIC countries in the negotiations (Findlay and Dimsdale 2009: 5; Olivier *et al.* 2015) thus underscored the necessity to better engage with other key actors and their (often diverging) standpoints (Paltsev *et al.* 2012; Christoff 2010).

#### Negotiating Kyoto II and Forming New Alliances

Having learned from the mistakes in Copenhagen, the next COP-16 in 2010 and the resulting Cancun Agreements put the negotiations towards a global agreement back on track. To a considerable extent this was due to a much more sensitive and transparent handling of the negotiations (strengthening mutual recognition) by the Mexican Presidency (Randerson *et al.* 2010). Notwithstanding this partial success however, it was clear that a new global agreement would not become effective before 2012 when the Kyoto protocol expired. Consequently, the EU began to negotiate a second period of the Kyoto protocol that would at least partly close this gap (Barnes 2011: 50). Kyoto II was finally agreed upon in the Doha Amendment at COP-18 in 2012, with the EU underlining its earlier 20 per cent by 2020 target (UNFCCC 2012; Delbeke and Vis 2015a: 17; European Commission 2013). While the EU target hence was still ambitious compared to other countries, it had already reduced its emissions in the first period of Kyoto by 19 per cent. Moreover, almost half of the reduction was due to the economic crisis

between 2008 and 2012 (Delbeke and Vis 2015a: 12), making the target for 2020 look somewhat unambitious.

On the one hand, these lowered ambitions were due to the growing realisation in the EU that ‘leadership by example’ and the persistence on ‘targets and timetables’, that is binding top-down reduction targets did not work anymore (Interview 2018a, 2018b). On the other hand, ambitious mitigation targets had become unpopular with several of the EU member states – not least due to the economic crisis –, especially amongst the newly acceded Eastern European countries (Rayner and Jordan 2016: 11–12). Thus, both an internal rethinking of its strategy and more practical political constraints played a role in the gradually changing EU strategy.

Eventually, Kyoto II only covered 15 per cent of global emissions with a reduction target of 18 percent by 2020 (Geden 2013: 1; Dröge 2016: 24). It was hence even less ambitious than the first period and in terms of achieving climate justice merely a symbolic step. Nevertheless, it constituted for the time being a last attempt to adopt a global, legally binding top-down agreement, which would mainly reinforce an impartial conception of justice. Subsequently, the EU departed from this approach, at least as a standalone tactic, and increasingly also relied on principles and strategies more in line with mutual recognition and, if it was not to avoid, also non-domination. The focus hence was more on listening to the concerns of others, fostering dialogue and integrating different standpoints but also on forging new strategic alliances.

#### 4.2 Changing Strategies on the Road towards Paris

Overcoming the distinction between the different negotiation camps and increasing its efforts in climate diplomacy was hence one of the main goals of the EU for the upcoming COP-21 in Paris (Dröge and Geden 2015: 1; Bäckstrand and Elgström 2013). Because France, would host the COP, the ambitions but also the pressure for a success were high. In 2015, the EU – as the first major economy – presented its Intended Nationally Determined Contribution (INDC)<sup>5</sup> for the conference, which amounted to a 40 per cent reduction by 2030 (Dröge 2016: 21; EU Commission 2018a). Yet, having realised the deficiencies of leading by example and pursuing top-down supranational solutions, the most important element was not anymore the EU’s actual pledge. In fact, in contrast to earlier negotiations, the EU did not offer to increase its offer if others followed, did not insist on the legally binding term ‘protocol’ for the agreement, and lacked a coherent domestic package of legislation to back up its INDCs (Dröge 2016: 21–22). The most striking feature of the EU strategy was a fundamentally changed approach to the

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<sup>5</sup> To focus on flexible and bottom-up INDCs instead of more top-down mitigation commitments had already been decided at the COP in Warsaw 2013 (Dröge 2016: 25).

negotiations, which can be seen as fostering mutual recognition (and in parts also non-domination) (Torney and Cross 2018; Walker 2018).

Thus, in the run-up to COP-21 in Paris, the EU and especially the French Presidency (Walker 2018: 9-10; Harvey 2015), engaged in a whole series of diplomatic efforts (Walker 2018: 1, 9; Christoff 2016: 769). The focus was on listening to the concerns of others, on bridge and coalition building especially with the developing world (Cross 2017: 3, 7, 10) but also on finding better ways to convince others of the EU vision. One important aspect of this changed strategy was the more central role of the European External Action Service (EEAS) that had been established in 2010. Key reasons for its greater influence were the negative experience in Copenhagen (Jong and Schunz 2012) but also the growing discussion about climate related security implications (Solana and EU Commission 2008), which had gradually transformed climate change from an environmental towards a foreign policy issue (Interview 2018a, 2018d; EEAS 2015). Another key feature was the upgraded role of the Green Diplomacy Network (GDN) (EurActiv 2003) – now led by the EEAS –, which was supposed to strengthen outreach activities organised by the members states embassies around the globe in order to better understand different perspectives of third countries (Interview 2018d; Torney and Cross 2018: 45).

As others have noticed, the focus on listening and incorporating different standpoints can be classified as a move away from justice as impartiality towards mutual recognition and procedural justice (Walker 2018). However, due to the still prevalent focus on states, diplomacy, coalition building, and the absence of a systematic supranational institutional framework to organise the dialogue, it also contains considerable elements of non-domination. During the COP-21 negotiations the French Presidency undeniably improved the procedures and consulted with non-state actors, which also played a greater role in the actual negotiations in Paris (Walker 2018: 9; Bäckstrand *et al.* 2017). However, the deciding players remained sovereign states (Falkner *et al.* 2010; Eckersley 2012) and despite increased diplomatic efforts, the negotiations took place in the same intergovernmental setting without substantively transforming the system or the general procedure, which still disadvantages non-state actors (Brugnach *et al.* 2017: 29). In addition, the now central instrument of the climate negotiations, the INDCs, are state based voluntary commitments that were particularly adopted as key instruments because they do not as much infringe on the sovereignty of those states (Dröge 2016: 6; Meulemann 2015).

Accordingly, in line with a state focused, coalition building approach, the EU tried to improve its climate relations with key emerging economies, above all the BASIC countries

(Dröge 2016: 6). In addition, it strengthened its diplomatic ties with smaller developing countries by establishing partnerships with Africa, the Pacific region and Asia (Cross 2017: 12). Beyond that, the EU reached out to key alliances in the negotiations such as the more progressive Least Developed Countries (LDCs) and Alliance of Small Island States (AOSIS), as well as more reluctant groups such as the Group of 77 and the Like Minded Group of Developing Countries (Interview 2018a, 2018b; Weischer *et al.* 2012; Dröge 2016: 19). In this context, the EU actively supported several countries in their efforts to develop their INDCs and National Adaptation Plans (NAPs) (Cross 2017: 17–18). A concrete example is the ‘Global Climate Change Alliance Plus’ (GCCA+), through which the EU cooperates with and supports particularly vulnerable countries and also works with civil society and private actors (GCCA+ 2015: 5; GCCA 2018).

This strategy can be read as strengthening weak mutual recognition because it helped smaller delegations from the Global South to cope with the often complex climate regulations and negotiations (Walker 2018: 2; Depledge 2016: 26). Yet, again, it failed to transform the UNFCCC system fundamentally or to truly integrate non-state actors. Thus, it was also in line with merely levelling out power imbalances, hence resembling non-domination.

In general, the EU’s approach consisted of elements that supported both mutual recognition and to a lesser extent non-domination. The EU’s ambition was to better recognize the concerns of other but at the same time to gather allies in its efforts for a new comprehensive (but possibly also less binding) climate agreement, hence it moved from ‘leading by example’ to an attempt of ‘shared leadership’ (Interview 2018b). While this to some extent reflected a more fundamental transformation of EU values and its conception of itself as a political actor, it was also a political strategy to eventually still reach a climate agreement, which would at least in parts strengthen an impartial vision of climate justice.

#### The Paris Agreement: A Success based on Mutual Recognition and Non-Domination?

When COP-21 in Paris eventually began, the EU together with the French Presidency, already had built trust with many key actors. It hence had laid the ground for the so called ‘High Ambition Coalition’ (HAC) that emerged from the 2015 established ‘Ambition Coalition’ (Christoff 2016: 772) and which would become a deciding factor in the negotiations (Interview 2018a; Mathiesen and Harvey 2015). The HAC bears a resemblance to both weak mutual recognition and non-domination. It is a voluntary, ad-hoc and legally non-prescriptive alliance of states, which undoubtedly points towards non-domination. However, it only became possible in the context of diplomatic efforts that improved the due hearing of many relevant actors, hence

also strengthening mutual recognition (Schneider 2017). Thus, by particularly ‘working the fractions’ (Interview 2018b) between the key players, most notably the G77, China and the US (Interview 2018a), but also by a flawless organisation of the negotiations and by appointing key laggards to important roles (Walker 2018: 12–15), the EU negotiators had successfully created a positive environment for the coalition and the subsequent agreement, in which nobody wanted to be left behind (Interview 2018a).

Eventually, on December 12<sup>th</sup> 2015 the 196 parties<sup>6</sup> of the UNFCCC adopted the Paris Agreement (PA). Entering into force on 4 November 2016, the PA constitutes the most comprehensive climate agreement so far and promises to ‘Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels’ (UN 2015: 3). It is also the first climate agreement that contains a definite long-term emission reduction goal (Falkner 2016: 1115; UN 2015: 4), which is derived directly from the ‘[...] best available science [...]’ (UN 2015: 4). While the PA thus does not entirely abandon principles linked to impartiality, it lacks the centralised, top-down and legally binding approach of the past. Instead, it mainly consists of the voluntary INDCs – after the adoption just NDCs (Dröge and Geden 2016: 1) –, of the signatory states.

The NDCs on the one hand, strengthen weak mutual recognition, mainly due to their bottom-up logic and the institutionalized manner in which they are integrated in the climate regime. They hence constitute a fundamental reorganisation of key processes in the climate regime and try to organise emission reduction efforts based on the specific local context and capabilities of each participant. On the other hand, their voluntary character and the focus on states resemble non-domination. In the end, the NDCs are a novel operationalisation of the CBDR (see also Christoff 2016: 779) that attempts to keep the essence of the principle but at the same time disconnects it from the stark differentiation between developed and developing countries by focusing on the APP instead of the PPP or BPP (Falkner 2016: 1115–1116). Thus, each participant was able to determine its contribution individually and ‘[...] reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.’ (UN 2015: 4). While this has been a necessary step in order to overcome the firewall, the reformulation of the CBDR is not unproblematic as it reduces the weight of the historical responsibility of developed countries (Cléménçon 2016: 4).

Even though the combined NDCs at the time of ratification were far from sufficient to reach even the 2°C goal (EU Commission 2018a; UNFCCC 2015; Dröge 2016: 6), a ‘five year

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<sup>6</sup> 195 states plus the EU.



review' and an 'ambition mechanism' are supposed to ensure ever more tight targets (UN 2015: 4–5; Dröge 2016: 6, 30). These two mechanisms are legally binding and linked to universal standards such as 'environmental integrity, transparency, accuracy, completeness, comparability and consistency' (UN 2015: 5), thus to some extent they reinforce impartiality. However, the fact that the states were able to ascertain their initial NDCs themselves without any legally binding pressure to reach a certain ambition significantly diminishes the impartial potential. The only pathways towards more ambition are peer as well as public pressure in the form of NGO lobbying and economic opportunities, which are supposed to 'name and shame' (Falkner 2016: 1121) participants into the right direction (Dröge 2016: 31). Notably, the NDCs do not only adhere to mitigation but can also mainly consist of adaptation measures, thus do not necessarily contribute to limit global warming. This aspect is a clear concession to climate laggards but also to many developing countries who were hoping for increased technological and financial support in the face of already happening adverse climatic effects (Dröge 2016: 8, 25). In the end, while broadening the scope of the climate regime and extending it with elements that can be understood as supporting weak mutual recognition and non-domination, the NDC approach might only lead to the smallest common denominator in terms of climate justice.

Nonetheless, a key advantage of the PA compared to Kyoto is that it was able to lift the firewall between developed and developing countries. It integrates the large emerging economies, above all China and India, but also the United States, without entirely giving up the CBDR (Dröge 2016: 5, 8). Even though President Donald Trump has announced to withdraw from the PA (von Lucke 2017), this has been an important step forward and exemplifies some of the advantages of overcoming a fixation on principles linked to impartiality as the only legitimate form of climate justice. Closely connected, the PA also contains elements that help to address distributional injustice and recognizes the specific vulnerability of developing countries while also ensuring continued 'sustainable development and eradication of poverty' in those countries (UN 2015: 1). Moreover, it speaks about a need for 'just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities' (UN 2015: 2). Interestingly, the concept of just transition has been widely used in inner EU debates about how to cope with changes in fossil fuel based industries in some of its member states and how to 'address climate justice in a socially equitable manner' (Interview 2018a; EESC 2017). Originally coming from trade unions, it is praised as a way to bridge climate abatement and growth and resembles concepts such as ecological modernisation/industrial policy and green economy (Smith 2017).

In conclusion, the PA mainly is a diplomatic success (Dröge 2016: 22; Christoff 2016: 766), which especially from the EU perspective was desperately needed (Interview 2018f). While it undoubtedly renewed the belief in the UNFCCC process, was widely praised as a breakthrough, and reinstated the relevance of the EU, it also comes with a price. In order to salvage a global agreement, the EU had to make considerable concessions particularly concerning the legally bindingness of the agreement. Thus, apart from its ambitious aims, organisationally the PA clearly departs from the top-down and binding character of Kyoto and instead mainly focuses on a voluntary and incremental bottom-up process. On the one hand, with a view on the improved negotiations process, the recognition of different perspectives, and the closer integration of non-state actors, this reinforces justice as mutual recognition. On the other hand, the emphasis on non-binding NDCs, the lack of any enforcement mechanisms beyond public pressure and the continued reliance on states as the key bearers of rights and duties points to non-domination. While this was fundamental in order to widen the scope of the agreement (Interview 2018d), it also makes it vulnerable to political changes. Examples are domestic developments such as the election of more climate sceptical administrations – President Trumps announcement to withdraw the US (von Lucke 2017) is the most drastic example, yet beyond that, studies have shown that right-wing populist regimes in general often oppose progressive climate policies (Lockwood 2018) – or global external shocks such as another economic crisis. Ultimately, the future of the PA crucially rests on the specific implementation of its measures – to be negotiated in connection to the ‘rulebook’ (Interview 2018d, 2018e) – and the continued domestic support. If that fails, it runs the risk of becoming even more of a solely ‘symbolic’ win in the quest for climate justice than the Kyoto Protocol (Gardiner 2004b).

## 5. Conclusion

In a press statement released after the first joint session of the Working Group I, II and III of the IPCC in South Korea on October 8<sup>th</sup> 2018, the IPCC issued yet another dire warning that ‘Limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes in all aspects of society [...]’ (IPCC 2018). Undoubtedly, this endeavour does not only require financial and technical capabilities but first of all a political process that helps to create effective but also just solutions to the problem. The aim of this paper was to take a closer look at the European Union and to inquire whether it has lived up to its favourable image as ‘green normative power’ and vanguard when it comes to the international climate negotiations and hence contributed to create such a favourable and just political environment. In more detail, the

paper has discussed two interrelated empirical questions. Firstly, which (changing) conceptions of justice have played a role in the EU's climate strategy? Secondly, has the EU been able to influence the international negotiations towards a (particular) just approach towards climate change?

Concerning conceptions of justice, the paper has found a clear preference for political measures that fall into the impartial category in the EU's climate strategy. Thus, especially in the negotiations about the UNFCCC and the Kyoto Protocol and its amendments, the EU tried to form a legally binding and supranational climate regime, which, based on climate science, committed industrialised countries to fixed mitigation targets in order to limit global warming below the dangerous threshold of two degrees. While the EU was fairly successful to push through this ideal model in the Kyoto Protocol and its extension, the failure of COP-15 in Copenhagen in 2009 impressively demonstrated the limits of such an approach. Moreover, the summit exemplified the growing importance of large emerging economies and the need for the EU to engage with these actors to stay relevant. Thus, in order to salvage its own influence but also the international climate regime, the EU decisively changed its negotiation strategy and key expectations for the regime in the run up to COP-21 in Paris in 2015.

While the desire for an ambitious and binding agreement never entirely went astray, the actual negotiation approach of the EU increasingly integrated elements resembling justice as (weak) mutual recognition and, when unavoidable, also non-domination. Thus, after Copenhagen the EU started a range of diplomatic outreach activities, tried to better listen to the perspectives of other key actors and improved the process of the negotiations at the COP itself. Moreover, it abandoned its leadership by example approach and instead tried to forge progressive alliances in line with the idea of 'shared leadership'. Eventually, these efforts payed off and were a crucial element in forging the 2015 Paris Agreement. While keeping a few elements strengthening impartiality, the PA itself mostly is a hybrid between measures that fall into the mutual recognition and non-domination category.

On the one hand, its key mechanism, the NDCs, systematically transforms the climate regime, functions in a bottom up manner, and respects the individual capabilities of the participants, hence reinforcing weak mutual recognition. On the other hand, its voluntary character, the focus on states and the key role of national sovereignty when it comes to determining the individual contributions point towards non-domination. While political measures that strengthen mutual recognition and non-domination were clearly needed to salvage the climate regime, there is a good chance that the resulting (voluntary) mechanisms and the lack of impartiality will jeopardize the effectiveness of the regime when it comes to

initiating the ‘unprecedented’ changes postulated by the IPCC. Thus, especially in the implementation process of the PA, there is a pressing need for the EU to regain its role as the lead navigator through the perfect moral storm and hence to feed back measures into the process that support justice as impartiality. However, this time without forgetting elements linked to other conceptions of justice.

Beyond these empirical insights, the paper exemplifies how a more political and procedural understanding of climate justice can indeed help to better make sense of the political negotiations. Thus, using the tripartite conception of justice has allowed me to identify and understand crucial transformations in the EU’s strategy, its internal values and in the international negotiations. Moreover, it has enabled me to single out key points of contestation between different important players in the negotiations and to understand how an adjustment in the political strategy of the EU has helped to address these differences to a certain extent. Thus, important struggles were not only about specific, substantive principles of justice – after all, most actors agreed that abating climate change was important and eventually also accepted that industrialised countries had to contribute more to this goal. Instead, the points of conflict often were procedural and political in nature. They hence revolved around the specific organisation of the regime and how this related to questions of national sovereignty, different economic models and the desire for global influence, which became much clearer through the lens of the theoretical framework used in this paper. Finally, the dynamic conception of political justice was also instrumental in coming to a more nuanced normative discussion of the advantages and pitfalls of specific climate policies and forms of organisation of the international regime. Hopefully, this paper can thus contribute to better understand and possibly overcome key obstacles on the path towards climate justice in a truly ‘non-ideal’ political environment.

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## Annex

List of central analysed primary documents		
Institution/ Program	Year	Document
EU Commission	1988	The Greenhouse Effect and the Community. Commission work programme concerning the evaluation of policy options to deal with the "greenhouse effect". Communication to the Council, COM(88) 656 final. Brussels.
EU Commission	1991	First Community Strategy to Limit Carbon Dioxide (CO <sub>2</sub> ) Emissions and Improve Energy Efficiency, available at <a href="http://europa.eu/rapid/press-release_P-92-29_en.htm">http://europa.eu/rapid/press-release_P-92-29_en.htm</a> , accessed 21 October 2016.
Council of the EU & EU Commission	1992	Maastricht Treaty on European Union. Luxembourg: Office for Official Publications of the European Communities.
UN	1992	United Nations Framework Convention On Climate Change. New York.
Council of the EU	1996	1939th Council Meeting - Environment, available at <a href="http://europa.eu/rapid/press-release_PRES-96-188_en.htm?locale=en">http://europa.eu/rapid/press-release_PRES-96-188_en.htm?locale=en</a> , accessed 17 July 2018.
European Union	1997	Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts. Luxembourg: Office for Official Publications of the European Communities.
UN	1998	Kyoto Protocol to the United Nations Framework Convention on Climate Change. Kyoto.
Council of the EU	2007	Environment Ministers Press Release 6272/07 (Presse 25). Brussels.

Council of the EU	2007	PRESS RELEASE 2785th Council Meeting. Environment. 6272/07 (Presse 25). Brussels.
European Union	2007	Charter Of Fundamental Rights Of The European Union', Official Journal of the European Union C 303/1.
European Parliament & Council of the EU	2009	Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020. Brussels.
EU Commission	2009	Klima- und Energiepaket 2020, available at <a href="http://ec.europa.eu/clima/policies/strategies/2020/index_de.htm">http://ec.europa.eu/clima/policies/strategies/2020/index_de.htm</a> , accessed 2 November 2016.
UNFCCC	2009	Ideas and proposals on the elements contained in paragraph 1 of the Bali Action Plan Submissions from Parties Part II.
UNFCCC	2009	Copenhagen Accord. Copenhagen.
UNFCCC	2012	Doha Amendment to the Kyoto Protocol. Doha.
EU Commission	2013	Climate action: Commission proposes ratification of second phase of Kyoto Protocol. Brussels.
EEAS	2015	EU Climate Diplomacy for 2015 and Beyond. Reflection paper. Brussels.
GCCA	2015	The plus of GCCA+. The Global Climate Change Alliance Plus An EU flagship initiative supporting climate resilience. Brussels.
UN	2015	Paris Agreement. Paris.
UNFCCC	2015	Synthesis report on the aggregate effect of the intended nationally determined contributions. Bonn.
EU Commission	2016	The EU Emissions Trading System (EU ETS). Brussels.
EU Commission	2018	Paris Agreement, available at <a href="https://ec.europa.eu/clima/policies/international/negotiations/paris_en">https://ec.europa.eu/clima/policies/international/negotiations/paris_en</a> , accessed 25 July 2018.
GCCA	2018	Policy dialogue, available at <a href="http://www.gcca.eu/services/policy-dialogue">http://www.gcca.eu/services/policy-dialogue</a> , accessed 8 November 2018.
EU Commission	2018	The EU: a leader in global climate finance, available at <a href="https://ec.europa.eu/clima/sites/clima/files/docs/climate_finance_leaflet_en.pdf">https://ec.europa.eu/clima/sites/clima/files/docs/climate_finance_leaflet_en.pdf</a> , accessed 8 November 2018.