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Justice for Loss and Damage: The Transformative Potential of Counter-Hegemonic Frames in the UN Climate Regime

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Abstract

Loss and Damage (L&D) refers to climate impacts that occur despite mitigation and adaptation. Vulnerable developing states and civil society actors have campaigned for the inclusion of L&D in the international climate regime since the early 1990s, framing it as an issue of climate justice. In particular, two justice-oriented demands have been central in L&D negotiations – the institutionalisation of L&D beyond adaptation and compensation and liability. Focusing on how these demands have been framed to challenge inequality, this research paper examines the integration of counter-hegemonic frames within the international climate regime along recognition and distributive justice dimensions. This research paper argues that counter-hegemonic frames are more likely to be recognised in formal regime decisions while distributive justice demands that seek to transform unequal power relations are stripped of their subversive potential. Furthermore, the non-integration of distributive justice highlights the structural constraints faced by counter-hegemonic actors within the dominant neoliberal structure of the regime.

Keywords: International climate governance, climate justice, counter-hegemony, UNFCCC, loss and damage, inequality

Introduction

The IPCC 1.5°C Special Report acknowledges that even if the increase in global average temperature is limited to 2°C above pre-industrial levels – the ambitious target set in the Paris Agreement – certain climate impacts will be unavoidable due to locked-in emissions

(IPCC 2018). These climate impacts include extreme weather events such as heatwaves, floods and cyclones, as well as slow-onset processes such as desertification and sea-level rise. These unavoidable impacts are termed as 'Loss and Damage' (hereafter L&D), indicating the limits of mitigation (reducing greenhouse gases) and adaptation (minimising the adverse effects of climate change) measures. Not only will these irreversible impacts result in large-scale economic and non-economic losses, but they also pose an existential threat to communities residing in vulnerable regions such as low-lying coastal areas (Geest et al. 2019). Against this backdrop, L&D has emerged as an important research agenda in international climate policy.

In the UN climate negotiations, the L&D debate has centred around the inclusion of L&D as a separate policy agenda alongside mitigation and adaptation. Small Island Developing States (SIDS), Least Developed Countries (LDCs), and civil society actors have advocated for the institutionalisation of L&D under the UNFCCC since the early 1990s, framing it as an issue of climate justice (Roberts and Huq 2015). However, despite two decades of campaigning efforts to include L&D in the international climate regime, progress on the issue has been slow due to disputes concerning the scope and implications of L&D (Calliari et al. 2019). These include contentions over compensation and liability, the relationship between L&D and adaptation, climate finance, and climate-induced displacement (Calliari 2018). Academic scholarship on the politics of L&D has paid attention to the disagreements between wealthy and vulnerable countries in the L&D negotiations (McNamara 2014; McNamara and Jackson 2018; Calliari 2018; Calliari et al. 2020); the role of NGOs in framing L&D as an issue of justice (Allan and Hadden 2017); and disputes over compensation, liability, and finance (Burkett 2014; 2016; Roberts and Huq 2015; Adelman 2016; Page and Heyward 2016). The evolution of L&D in the UN climate negotiations is an important and interesting case study to examine the role of vulnerable states and civil society actors advancing justice-oriented demands that subvert dominant power structures. In this research paper, I ask - how have counter-hegemonic frames that challenge inequality been integrated within the international climate regime? By assessing the integration of counter-hegemonic frames in the L&D negotiations, this research paper contributes to scholarship on the interaction between justice and power in the post-Paris regime (see Cipler 2015; 2017; 2019; Okereke and Coventry 2016).

Using Cipler's (2017) counter-hegemonic frame integration framework, I assess the integration of counter-hegemonic frames in L&D negotiations, focusing on the outcomes at the Warsaw and Paris climate talks. My findings show that counter-hegemonic frames are

more likely to achieve recognition gains than substantial distributive justice policy gains. Moreover, wealthy states also obstruct distributive justice demands by constructing alternative frames that obscure their responsibility to address material injustices. Based on these findings, I argue that counter-hegemonic frames are stripped of their potential to transform unequal power relations in the regime. Furthermore, the non-integration of distributive justice aspects of counter-hegemonic frames highlights the structural constraints faced by counter-hegemonic actors within the regime.

This research paper begins with an overview of different conceptualisations of justice in the UN climate regime, tracing the emergence of 'climate justice' as a counter-hegemonic position in the regime. I also outline the progress on L&D negotiations, highlighting key outcomes at Warsaw and Paris. In the following section, I explain the analytical framework guiding my research study. I proceed to apply the framework to the case of L&D, assessing the integration of two subversive frames - 'climate debt' and 'beyond adaptation'. Drawing on my findings, I argue that frame recognition has not been accompanied by the integration of distributive justice demands, thereby undermining the transformative potential of counter-hegemonic frames. In the concluding section, I explore the implications of L&D in the upcoming climate negotiations and reflect on future research directions.

Climate Justice in the UNFCCC

Justice has been a consistent theme within the international climate negotiations since the early 1990s, with Article 4 of the UNFCCC acknowledging the 'common but differentiated responsibilities' of states in addressing climate change (Okereke 2010: 29). Over the last three decades, multiple interpretations and perspectives of justice have shaped the development of the international climate regime. These include justice in the distribution of burdens and responsibilities (Young 1990; Shue 1992), compensation for past harms (Goodin 1989), recognition, capabilities and participation (Schlosberg 2004), and human rights centred approaches (Skillington 2017). Justice concerns have also been situated in the context of North-South politics to highlight historical and current disparities in emissions, risks, and vulnerabilities (Roberts and Parks 2007; Okereke 2010; Cipler et al. 2015). In short, the UNFCCC has been an important forum for conceptualising justice alongside international climate policy.

Climate Justice and Transnational Civil Society

In addition to academic scholarship on justice in the regime, climate justice has also emerged as a collective action frame within social movements (Hadden 2015). Stemming

from environmental justice activism in the United States in the 1980s, the climate justice movement frames climate change as a systemic problem that is inextricably linked to social, political, and economic structures (Goodman 2009; Derman 2013). Over the last two decades, the transnational climate justice movement has mobilised a network of civil society actors ranging from grassroots organisations to international NGOs (Almeida 2019). Since the climate justice frame encompasses social, political, and economic struggles such as gender and class inequality, it has enabled the movement to expand beyond the realm of environmental activism (Chatterton et al. 2012).

Demands for climate justice are embedded in radical civic environmentalism. To elaborate, Bäckstrand and Lövbrand (2006; 2016) distinguish between reform-oriented and radical civic environmentalist discourses within climate activism. While the reformist discourse promotes cooperation between civil society, the state and the market to strengthen climate governance, the radical environmentalist discourse problematises existing power structures, especially global capitalism (Bäckstrand and Lövbrand 2006: 56). Simply put, the radical civic environmentalism discourse calls for the structural transformation of dominant political economic structures, envisaging large-scale economic, political, and cultural shifts within society. This is captured in the climate justice movement's slogan 'system change, not climate change' (Chatterton et al 2012: 607). Thus, the climate justice movement resists and challenges dominant power structures that perpetuate inequality.

Subverting Neoliberal Hegemony in the UN Climate Regime

The increased involvement of transnational civil society actors in the climate negotiations has also amplified demands for climate justice within the regime (Bäckstrand et al. 2017). Civil society networks such as Climate Justice Now! and the Third World Network have used the annual climate negotiations as a space to organise, protest, and build alliances with marginalised state actors (Derman 2013). As Hadden (2015: 12) notes, climate justice has been a strategic frame for civil society and state actors to form a coalition to challenge inequality in the regime.

The contemporary climate regime is characterised by neoliberal governance practices and processes (Okereke 2007; 2010; Cipler et al. 2015; Cipler and Roberts 2017). Two central features of neoliberal environmental governance include the dominance of libertarian principles of justice over distributive justice and the proliferation of market-based policy interventions to address climate change (Cipler and Roberts 2017). Analysing different conceptualisations of justice within the UNFCCC since 1992, Okereke (2007) argues that

the core policies within the contemporary regime are rooted in neoliberal political economic rationale. These include libertarian principles of justice which prioritise private property rights and the rational pursuit of self-interest among state Parties (Okereke 2007). Importantly, these principles align with - and reinforce - neoliberal logics, thereby failing to acknowledge power asymmetries and structural inequalities within the regime (Ciplet and Roberts 2017). Hence, Okereke (2007) concludes that justice principles based on neoliberal logics remain incompatible with norms of distributive justice which problematise inequality.

The shift towards neoliberal environmental governance has also resulted in resistance from civil society actors. In particular, civil society actors have challenged market-based forms of valuing and governing the environment. For instance, carbon and biodiversity offset markets have been critiqued on normative grounds for commodifying nature and excluding justice and equity-based concerns in decision-making (Bäckstrand and Lövbrand 2006; O'Neill 2017). Furthermore, civil society actors also regard market-based approaches as 'false solutions' that fail to address the underlying causes of climate change, namely capitalism and colonialism (Pearse 2010; Chatterton et al. 2012).

In light of the growing resistance to neoliberal environmental governance, scholars have turned towards Gramscian scholarship to theorise challenges to structures of dominance within regimes (see Levy and Egan 2003; Okereke 2007; Smith 2014; Ciplet et al. 2015; Ciplet 2019). As Levy and Egan (2003: 20) put it, Gramscian theory pays attention to 'the capacity of agents to comprehend social structures and effect change, while simultaneously being constructed and constrained by them'. In other words, Gramscian perspectives highlight the crucial role of structures without undermining the potential of counter-hegemonic agents in challenging dominant orders. Structures refer to the norms, principles and rules that shape regimes and privilege certain ideas, actors and policies above others (Bulkeley et al. 2009: 68). To summarise, paying attention to dominant political economic structures within which agents operate helps make sense of the opportunities and limitations of counter-hegemonic positions.

Counter-hegemonic positions, unlike reformist positions, seek to disrupt dominant structures by refusing to take power relations as given (Okereke 2007: 186). In the context of neoliberal governance, the radical environmentalist discourse also draws on Gramscian perspectives to contend that 'relations of power and powerlessness are at the core of international institutions and negotiation processes' (Bäckstrand and Lövbrand 2006: 56). By centring unequal power relations, the climate justice movement adopts a counter-hegemonic position

to challenge the dominant neoliberal structure of the regime (Ciplet 2019: 299). Hence, Gramscian theory bridges the gap between the micro-processes of coalition-building and the macro political economic structures to highlight the subversive potential of counter-hegemonic agency within regimes.

Climate Justice for Loss and Damage

Although there is no formal definition for Loss and Damage in the UNFCCC, the working definition describes it as ‘the negative effects of climate variability and climate change that people have not been able to cope with or adapt to’ (Stabinsky and Hoffmaister 2015: 299). In other words, L&D occurs despite strategies to adapt to climate change.

The first L&D proposal in the negotiations was submitted by Vanuatu on behalf of the Alliance of Small Island States (AOSIS) in 1991. The proposal called for the creation of an insurance pool comprising mandatory contributions from wealthy countries to compensate low-lying states for adverse impacts associated with rising sea levels (INC 1991). During the 1990s and early 2000s, SIDS and LDCs continued to put forth demands for a coherent and strong L&D mechanism in the UNFCCC because of their unique vulnerability and limited capacity to cope with natural disasters and rising sea levels (McNamara and Jackson 2018). In subsequent negotiations, particularly from 2008 onwards, the Africa Group and the G77 and China also coalesced around demands for L&D (Kreienkemp and Vanhala 2017). Around the same time, civil society actors began publishing policy briefs to underscore the importance of recognising L&D as a distinct issue from mitigation and adaptation (see Verheyen and Roderick 2008; ActionAid 2010; CAN 2010; Verheyen 2012). Civil society actors also raised the visibility of L&D demands in the media, especially during demonstrations at the Copenhagen (2010), Doha (2012) and Warsaw (2013) negotiations (Ciplet 2017: 1066-1068; Khan et al 2020: 258). Civil society actors and vulnerable developing countries framed L&D as an issue of climate justice, foregrounding the responsibility of wealthy countries to compensate vulnerable countries for the unequal vulnerabilities and burdens associated with unavoidable climate impacts (Verheyen and Roderick 2008; Allan and Hadden 2017). Hence, vulnerable developing countries and civil society actors adopted a unified position to demand the inclusion of L&D within the regime. Nearly two decades since the issue was raised in the negotiations, L&D was mentioned in formal regime texts for the first time at COP13 in Bali in 2007 (Kreienkemp and Vanhala 2017). At COP16 in 2010, a two-year work programme was created at the Cancún negotiations to build technical expertise and strengthen international cooperation on L&D (McNamara and Jackson 2016). Two years later at COP18 in Doha, Parties discussed the

possibility of creating a separate institutional mechanism to address L&D, which eventually resulted in the establishment of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM) at COP19 in 2013 (UNFCCC 2013). An Executive Committee (WIM ExCom) was also set up to implement the three key functions listed in the mechanism: increasing knowledge and expertise, strengthening dialogue and coordination, and enhancing action and support to address loss and damage (UNFCCC 2013: .8-10). While the WIM was a separate institutional mechanism dedicated to L&D, it was still an interim measure that lacked a permanent basis under the UNFCCC (Burkett 2016: 125).

At the Paris talks in 2015, L&D reached another milestone with the creation of a standalone article (Article 8) in the Paris Agreement. In addition to sanctioning the permanence of L&D within the regime, the Paris Agreement was also the first international climate treaty to formally recognise L&D as a separate policy concern from mitigation and adaptation (Pekkarinen et al. 2019: 34). Hence, the outcome at Paris marked significant progress on the L&D agenda, establishing it as the unofficial 'third' pillar within international climate policy alongside mitigation and adaptation (Roberts and Huq 2015).

Despite the breakthroughs at Warsaw and Paris, some of the underlying concerns in L&D proposals have not been addressed in the regime. More specifically, questions about funding mechanisms for L&D, the omission of compensation and liability in Article 8 of the Agreement, and legal mechanisms to facilitate climate-related displacement remain contentious and unresolved in the regime (Mace and Verheyen 2016). While all of these outstanding concerns are significant for progress on the L&D agenda in future negotiations, I primarily focus on compensation, liability, and finance since these issues directly relate to counter-hegemonic demands that challenge inequality within the regime.

Methodology

To examine how justice-oriented demands in L&D have been integrated within the UN climate regime, I use Cipler's (2017) counter-hegemonic frame integration framework. This analytical framework has been developed to assess counter-hegemonic policy gains in multilateral regimes along two dimensions - recognition and distributive justice. Recognition justice refers to the explicit recognition of counter-hegemonic frames within formal regime texts and decisions while distributive justice entails the redistribution of material resources in accordance with equity and fairness (Cipler 2017: 1054-55).

I have chosen this framework to approach my research study because it draws on Gramscian scholarship, providing the analytical tools to help make sense of resistance within the contemporary climate regime. An advantage of Gramscian theory is that it moves beyond state-centred conceptualisations of power to theorise the possibilities and limitations of transformative social change within regimes (Levy and Evan 2003). As Bulkeley et al (2009: 76) argue, the increased participation of non-state actors such as businesses, NGOs and grassroots organisations within the climate negotiations necessitates an account of power that captures their role and influence in the contemporary climate regime. As such, Ciple's analytical framework builds on Gramscian concepts to theorise how civil society and marginalised state actors frame justice-oriented demands to subvert hegemonic structures and subsequently analyse how these frames are integrated (or not) in the regime.

Frames matter because they reveal how different actors construct a policy problem to prescribe a certain policy solution (Paterson 2020: 2). Put differently, frames enable actors to define a problem in a manner that enables or restricts policy responses to address the problem. Analysing frames in the international climate negotiations sheds light on how different actors seek to influence international climate policy (Vanhala and Hestbaek 2016). Allan and Hadden (2017: 603) also add that framing is an active process wherein actors engage in agenda setting within regimes. However, it must be noted that not all frames challenge dominant political economic structures. Frames can assert or contest hegemony within regimes. As Ford (2003: 122) argues, reformist frames tend to reinforce existing power structures by aligning with the interests of powerful actors while counter-hegemonic frames undermine dominant hegemonic structures.

Since this research paper examines justice-oriented demands in L&D that aim to disrupt inequality, my analysis is limited to counter-hegemonic frames. I identify and assess the integration of two frames within L&D – 'climate debt' and 'beyond adaptation'. I have selected these frames for two reasons. First, both frames highlight ongoing contentions within the L&D negotiations. The 'climate debt' frame underpins demands for compensation and liability while the 'beyond adaptation' frame focuses on the relationship between L&D and adaptation, especially in the context of finance. Second, both frames foreground material injustice within the regime by including distributive demands that involve the transfer of financial resources from wealthy to vulnerable states. Hence, assessing the integration of these demands along recognition and distributive justice dimensions is central to answering my research question: how have counter-hegemonic frames that challenge inequality been integrated within the UN climate regime?

To assess the progress and integration of the aforementioned counter-hegemonic frames, I review reports by NGOs and civil society networks including Climate Action Network International, BOND, Germanwatch and the Third World Network, as well as Submissions by State Parties and Observers (primarily NGOs) during the annual UN conferences. I also examine UNFCCC documents at the Warsaw and Paris negotiations to assess whether the integration of these two counter-hegemonic frames did or did not result in substantive policy gains along recognition and distributive justice dimensions.

Counter-Hegemonic Frame Integration in Loss and Damage Negotiations

In this section, I trace the emergence and evolution of the 'climate debt' and 'beyond adaptation' frames in the negotiations. Applying the framework outlined in the previous section, I examine how these two frames have been integrated as counter-hegemonic in the regime. My findings demonstrate that the recognition of counter-hegemonic frames is more likely when frames do not explicitly disrupt inequality. Moreover, distributive demands which dictate the transfer of financial resources from wealthy to vulnerable countries have not been integrated within the regime. In addition to examining the recognition and distributive justice outcomes of each frame, I also demonstrate how wealthy states construct alternative frames to oppose distributive demands. These findings substantiate my argument that the non-integration of distributive justice within the regime constrains the transformative potential of counter-hegemonic frames.

Compensation and Liability for 'Climate Debt'

The climate debt frame, introduced in the negotiations by NGOs Acción Ecológica and Christian Aid in the late 1990s, refers to the debt that wealthy countries owe vulnerable and low-income countries on account of past and current disparities in emissions (Ciplet 2017: 1055). Wealthy countries are responsible for the majority of greenhouse gas emissions that have contributed to anthropogenic climate change, while low-income and vulnerable countries face disproportionate climate impacts (Adelman 2016). In addition to increasing financial burdens on vulnerable countries, unavoidable climate impacts also undermine progress on other socio-economic goals such as poverty alleviation (Burkett 2014). By contextualising present and future vulnerabilities in relation to past emissions, the climate debt frame highlights systemic inequalities between countries.

The climate debt frame has underpinned demands for compensation and liability in L&D proposals. Based on the normative principles of historical responsibility and compensatory

justice, demands for compensation and liability highlight that wealthy countries bear the greatest responsibility for funding and action on climate change on account of past emissions (Wallimann-Helmer 2015). As Burkett (2016: 119) notes, the key tenet of compensation and liability is that wealthy states are morally and legally obligated to recompense vulnerable developing states which face disproportionate climate impacts. Since the initial 1991 AOSIS proposal, compensation and liability has been at the core of the L&D debate. While the 1991 proposal called for insurance-related action comprising mandatory contributions from wealthy states to aid low-lying island states, the revised proposal in 2008 explicitly included 'compensation or rehabilitation' as an essential component of L&D alongside insurance and risk management (AOSIS 2008). Among State Parties, SIDS and LDCs have strongly advocated for the inclusion of compensation and liability within the negotiations (Roberts and Parks 2007; Cipler 2017). Demands for compensation and liability steadily increased during the first two decades of the climate negotiations, gaining traction from 2008 onwards when states and civil society actors framed L&D as an issue of climate justice (Vanhala and Hestbaek 2016: 116).

At the Warsaw talks in 2013, a submission by Bolivia and a group of developing states called for the establishment of a 'solidarity fund' to compensate vulnerable countries for permanent and irreversible losses (Bolivia et al. 2013: 2). The Africa Group (2013: 2-4) Submission also included demands for compensatory mechanisms in the regime, taking into account the historical responsibility of wealthy countries and the development needs of vulnerable countries. To strengthen demands for compensation, negotiators from the Philippines delegation also underscored the widespread destruction caused by Typhoon Haiyan which struck the Philippines a week before the Warsaw negotiations, resulting in over 7000 deaths and economic losses worth \$5.8 billion (Branigan 2013; Vanhala and Hestbaek 2016).

Similarly, demands for compensation also gained momentum among civil society actors in the climate justice movement. At the Copenhagen Summit in 2009, a sign-on letter by 254 civil society groups demanded the recognition of 'climate debt' in the negotiations (Third World Network 2009). At the People's Climate Summit in Cochabamba in 2010, the People's Agreement on Climate Change included 'the repayment of climate debt' as one of its five key climate justice demands (WPCCC 2010). In the lead up to COP19 at Warsaw, transnational NGOs including ActionAid, CAN International, and the World Wildlife Fund published a series of policy briefs proposing compensation funds to support vulnerable and low-income countries (see ActionAid 2010; CAN 2010; Verheyen 2012). Thus, vulnerable developing

states and civil society actors used the climate debt frame to highlight demands for compensation and liability in the negotiations.

Compensation and Liability Versus Risk and Insurance

Despite a coalition of vulnerable developing states and civil society actors advancing justice-oriented demands for compensation and liability, it has been the most contentious issue within L&D negotiations (Calliari et al. 2019). Wealthy states - especially the United States and Australia - have refused to engage in debates concerning compensation and liability, and have opposed any financial mechanisms for rehabilitation or compensation (Vanhala and Hestbaek 2016: 117). As Burkett (2016) notes, the main reason why wealthy states have resisted acknowledging compensation and liability is that it would establish the legal basis for large financial transfers from the global North to the South. In other words, the financial responsibility for addressing L&D would largely be borne by wealthy countries. To negate distributive demands for compensation and liability, wealthy state Parties instead framed L&D as an issue of 'risk and insurance' within the negotiations (Vanhala and Hestbaek 2016). Framing L&D as risk and insurance has different normative and policy implications than compensation and liability. From a normative perspective, compensation and liability establishes a link between responsibility and harm for L&D since it is premised on holding wealthy states responsible for the future harms that will befall vulnerable countries (ActionAid 2010: 22). Compensation also attempts to minimise unequal vulnerabilities through financial transfers from states that have contributed the most to climate change to those that have contributed the least (Wallimann-Helmer 2015). In contrast, the risk and insurance frame conceptualises L&D as a problem of risk and uncertainty rather than harm, thereby excluding any basis for responsibility or accountability (Calliari et al. 2019). Importantly, it shifts the discourse of L&D from responsibility, liability, and harm towards more technocratic aspects such as risk transfer and mitigation.

The normative differences between the frames also prescribe different policy solutions to address L&D. On the one hand, compensation and liability centres the need for compensatory or rehabilitation funds that distribute financial resources from wealthy countries to vulnerable countries. As discussed in the previous section, compensatory funds are underpinned by justice and equity principles which aim to mitigate disproportionate financial burdens on vulnerable states. On the other hand, insurance-based mechanisms focus on transferring risk rather than disrupting inequality or remedying harms (Gewirtzman et al. 2018: 1080). In addition, insurance schemes are also market-based policy instruments that are not appropriate for all L&D impacts. For instance, insurance schemes usually cover

finance for extreme weather events in the short-term but fail to account for associated with slow-onset events, non-economic losses, and lost development opportunities (Adelman 2016: 49; Gewirtzman et al. 2018: 1083). Another limitation of insurance schemes is that vulnerable populations most in need of finance may not be able to afford insurance premiums or may lack access to formal insurance schemes (Adelman 2016: 49; see also Richards and Schalatek 2018). In turn, this may exacerbate inequality within communities because the most disadvantaged and vulnerable populations will not be able to access finance to cope with L&D impacts.

It should be noted here that vulnerable developing states and civil society actors have not completely ruled out insurance schemes as a finance mechanism to address L&D. Instead, insurance is listed as one component of a more comprehensive financial strategy to govern L&D (AOSIS 2008; CAN and BOND 2017; Richards and Schalatek 2018). Due to the limitations of insurance as a viable, long-term solution to cope with L&D and equity concerns associated with the distribution of financial burdens, civil society actors and vulnerable states argue that financial mechanisms beyond insurance are needed to address L&D. Despite these shortcomings, insurance continues to dominate L&D finance discussions in the WIM ExCom while redistributive measures linked to the climate debt frame have been neglected (Gewirtzman et al. 2018: 1079).

Recognition and Distributive Justice Outcomes

The climate debt frame is not recognised within formal texts and decisions in the regime. As discussed in the previous section, wealthy state Parties have consistently opposed claims for compensation and liability throughout the negotiations. Their resistance towards compensation and liability was evident during the Warsaw negotiations, with the European Union and the United States positioning themselves firmly against the inclusion of any legal provision for compensation (Burkett 2016: 122). Once again at the Paris talks, an L&D article was created in the Paris Agreement but it explicitly excluded the legal basis for any compensation and liability in the regime (Burkett 2016: 123). Thus, the climate debt frame has not been formally recognised within the regime primarily due to concerns that it would form the basis for large scale financial transfers from the global North to the South, thereby disrupting inequality.

In terms of distributive justice, demands for compensation and the repayment of climate debt have also not been integrated within the regime. The risk and insurance frame has dominated discussions of L&D rather than the climate debt frame. As a result, financial

support to vulnerable countries has primarily taken the form of insurance schemes. As Gewirtzman et al. (2018: 1081-4) point out, existing insurance mechanisms also represent a market-based solution to L&D which is largely dependent on voluntary action by wealthy states. Not only do insurance schemes lack the subversive potential of compensation demands (which explicitly challenge inequality), but they also remain insufficient to address L&D. Thus, the regime has been unresponsive to claims for compensation and liability in the climate debt frame. In sum, there have been no substantial recognition or distributive justice policy gains resulting from the integration of the climate debt frame.

Loss and Damage as 'Beyond Adaptation'

The 'beyond adaptation' frame refers to the scope of L&D in relation to adaptation policy in the regime. This frame underscores the need to address L&D through institutional mechanisms distinct from adaptation (Calliari 2018). Like the climate debt frame, vulnerable states and civil society actors have used the beyond adaptation frame to advance justice-oriented demands. This frame posits that a separate policy space is necessary to adequately respond to L&D, which has been usually been interpreted as a part of adaptation rather than a separate policy concern (Kreienkemp and Vanhala 2017).

While it remains difficult to draw a conceptual distinction between adaptation and L&D due to overlaps in risks and impacts, Wallieman-Helmer (2015: 472) argues that L&D entails responsibilities in addition to existing adaptation provisions. This is because adaptation generally refers to strategies to build resilience and adjust to the adverse effects of climate change while loss and damage occurs when adaptation fails (ActionAid 2010: 11). Framing L&D as an issue 'beyond adaptation' warrants additional resources including finance, expertise, and technical knowledge. Hence, the beyond adaptation frame foregrounds the additional responsibilities and resources necessary to address L&D.

The beyond adaptation frame gained traction in the negotiations from 2008 onwards, as demands for compensation and liability increased in the regime (Vanhala and Hestbaek 2016). Prior to this, the contestations between wealthy and developing states were along the lines of whether L&D should be included in the UNFCCC at all (Calliari 2018). Wealthy state Parties argued that L&D should be positioned under the Hyogo Framework for Action and subsequently under the Sendai Framework for Disaster Risk Reduction (Kreienkemp and Vanhala 2017). Both these frameworks focus on disaster risk reduction and building community resilience to extreme weather events. However, addressing climate impacts is

not framed in terms of responsibility or accountability for harms (Vanhala and Hestbaek 2016).

As justice-oriented demands for L&D increased within the negotiations, wealthy states – especially the United States, Australia, and Norway - positioned L&D on the adaptation spectrum (McNamara 2014). They opposed framing L&D as ‘beyond adaptation’ by claiming that existing institutional mechanisms were sufficient to address L&D demands (Calliari et al. 2020). Furthermore, the United States also argued that an international L&D mechanism would undermine a country-driven approach to adaptation (Vanhala and Hestbaek 2016). Thus, wealthy state parties resisted the beyond adaptation frame by arguing that L&D constituted a part of adaptation and should be situated within existing adaptation mechanisms and national climate policy frameworks.

Despite opposition to demands for a separate L&D mechanism, increased pressure from the coalition of vulnerable states and civil society actors eventually led to the recognition of the beyond adaptation frame. At COP19 in Warsaw, the AOSIS and the G77 and China enunciated that L&D should be interpreted as ‘beyond adaptation’ (Vanhala and Hestbaek 2016: 119). The Submission by Bolivia and a group of developing states also stated that the decision to include L&D within the UN climate regime would be directly linked to the ‘successful or unsuccessful fulfilment of the Convention’ (Bolivia et al. 2013). Furthermore, the G77 and China also staged a walkout at Warsaw when wealthy states planned to delay discussions on L&D (Allan and Hadden 2017). In short, the inclusion of L&D within the regime constituted a red line for vulnerable states, eventually resulting in a compromise at Warsaw. The WIM was created as a distinct policy mechanism dedicated to L&D, however, it was still housed within the adaptation pillar (Burkett 2016: 122).

Since the WIM was an interim measure, the beyond adaptation frame persisted after the Warsaw talks. In the lead up to Paris, wealthy states once again opposed framing L&D as a separate policy agenda. A Submission by the United States, supported by Canada and Australia, called for the removal of any reference to loss and damage in the Paris Agreement (Third World Network 2015). However, the outcome at Paris sanctioned the permanence of the WIM in the regime. Thus, the standalone L&D article (Article 8) of the Paris Agreement signified a gain for the beyond adaptation frame by acknowledging the limitations of adaptation and ‘the importance of averting, minimising and addressing loss and damage’ under the Convention (UNFCCC 2015: 12).

Climate Finance Beyond Adaptation and Insurance

Driven by a climate justice imperative, the beyond adaptation frame highlights the insufficient institutional mechanisms to address L&D. Framing L&D as a distinct issue from adaptation has been important in the context of devoting separate resources to finance, capacity building and technical support for L&D (Mace and Verheyen 2016: 208). In particular, vulnerable developing states and civil society actors have emphasized the need for additional financial support beyond adaptation and insurance.

Since L&D costs fall beyond adaptation, scaling up finance for L&D is necessary to reduce financial burdens on low-income countries (Roberts et al. 2017). The importance of increasing finance for L&D was raised by the G77 and China before the WIM reviews in 2017 and 2019 (Gewirtzman et al. 2018; Manke et al 2020). Based on the estimates of financial costs accruing to L&D, Richards and Schalatek (2018) recommend that a global budget of \$200-300 billion per year by 2030 will be necessary to adequately address L&D impacts. As a result, civil society actors and policy practitioners have proposed innovative finance mechanisms comprising new and additional sources of finance (Roberts et al., 2017; see also CAN and BOND 2018; Gewirtzman et al. 2018; Richards and Schalatek 2018). These include levies on the fossil fuel and aviation industries, taxes on international financial transactions and a global carbon tax. Richards and Boom (2014) also argue that major polluting industries such as oil, gas, and coal, should be taxed to raise L&D finance to support vulnerable and low-income countries.

However, progress on scaling up finance for L&D has been limited. Article 8 of the Paris Agreement acknowledges the limitations of adaptation but fails to include any concrete funding mechanisms beyond the existing insurance schemes for L&D (Burkett 2016: 124). Similarly, Article 9 of the Paris Agreement – which includes finance for mitigation and adaptation – does not mention any funding streams for L&D (UNFCCC 2015: 13). Furthermore, the WIM ExCom has also overlooked recommendations for alternative or innovative sources of finance to support L&D activities (Gewirtzman et al. 2018). Reviews of the WIM also highlight that the WIM ExCom has largely focussed on the first two functions of the mechanism (increasing knowledge and strengthening coordination) while the third function (enhancing support and action) has been neglected (CAN and BOND 2017; Richards and Schalatek 2018; Pekkarinen et al. 2019).

Recognition and Distributive Justice Outcomes

The beyond adaptation frame has witnessed recognition gains while substantive distributive justice gains have not been integrated within the regime. While wealthy states resisted the beyond adaptation frame, increased pressure from vulnerable states and civil society actors led to progress on institutionalising L&D as a distinct policy sphere. The creation of the WIM in 2013 was a notable recognition gain which resulted in a separate institutional mechanism to address L&D. Similarly, the inclusion of a standalone L&D article in the Paris Agreement also highlights the formal recognition of L&D as a separate issue from adaptation, indicating that not all adverse effects of climate change can be addressed through existing adaptation measures.

However, in terms of distributive justice, the beyond adaptation frame has not been integrated to meet financial demands in L&D proposals. While the Paris Agreement made progress on establishing L&D as a separate policy space, it failed to include specific financial commitments by wealthy states. Despite its significance as a distinct issue from adaptation, the lack of concrete and adequate funding mechanisms remains a major barrier to the implementation of L&D (Pekkarinen et al 2019). Thus, the integration of the 'beyond adaptation' frame has resulted in recognition gains while the distributive justice demands remain unintegrated.

Transforming Inequality in the UN Climate Regime

The two frames within L&D proposals highlight contentions in the inclusion of compensation and liability and the legitimacy of L&D as a distinct policy arena from adaptation. These frames are important to understand how L&D has been interpreted and addressed within the regime. Examining progress on the L&D agenda through the counter-hegemonic frame integration approach also signifies how vulnerable states and civil society actors have employed counter-hegemonic frames to advance justice-oriented demands that challenge power relations within the dominant political economic structure of the regime. The findings from my analysis demonstrate that the 'beyond adaptation' frame has been more successful than the 'climate debt' frame in terms of recognition gains in formal regime texts and decisions. However, distributive justice elements of both frames have not been integrated as counter-hegemonic in the regime. Thus, responsibility for historical emissions and concrete commitments for L&D finance remain contentious within the negotiations.

The non-integration of distributive justice illustrates the structural constraints of counter-hegemonic positions within the dominant neoliberal political economic structure of the regime. Counter-hegemonic frames that challenge inequality remain difficult to integrate

within the contemporary regime dominated by neoliberal principles of justice. The L&D case reflects Cipler's (2019: 300) findings that marginalised advocacy networks that promote counter-hegemonic positions receive concessional gains rather than distributive policy gains. Put differently, the recognition of counter-hegemonic demands within the regime serves as a concession gain to retain hegemonic structures, while distributive demands remain unaddressed. As a result, the underlying relations of inequality within hegemonic structures remain intact.

As Okereke (2007) argues, distributive justice ideals that explicitly challenge inequality remain incompatible within neoliberal environmental governance. To help make sense of this in the context of L&D, it is also worth briefly examining distributive justice in adaptation finance since it faces similar structural constraints as L&D. Khan et al (2020) analyse adaptation finance in the regime in the last twenty-five years, arguing that distributive justice demands within adaptation finance have been neglected. Adaptation funding has been dominated by market-based insurance schemes and voluntary contributions rather than responsibility-based concrete financial commitments. Furthermore, there remains a significant gap between financial pledges by wealthy states and the adaptation finance needs of vulnerable countries (Cipler et al. 2013). In short, Khan et al's (2020) comprehensive review of climate justice in adaptation finance concludes that distributive justice in adaptation finance is constrained by neoliberal principles of justice in the regime. Similarly, my findings show that distributive justice demands in L&D have not been integrated as counter-hegemonic in the regime. Reviews of existing funding mechanisms in the WIM point out that finance for L&D has mostly been raised from voluntary contributions and insurance schemes rather than equitable, permanent and long-term sources (Gewirtzman et al. 2018; Menke et al. 2020). The exclusion of compensation and liability from regime texts and the lack of permanent and concrete funding commitments also demonstrate that the recognition of L&D has not been accompanied by the fulfilment of distributive justice demands. Hence, as Burkett (2016) put it, the L&D provision remains weak despite notable successes at the Warsaw and Paris climate talks.

Despite the non-integration of distributive aspects of these frames, demands for L&D finance have persisted in the post-Paris regime. Although the climate debt frame has become less visible since compensation and liability was ruled out in the Paris Agreement, some legal scholars contend that demands for compensation may re-emerge in future negotiations or may be pursued as litigation cases under international law (Burkett 2016; Page and Heyward 2016; Mace and Verheyen 2016). Importantly, the beyond adaptation frame

persists in relation to contestations over L&D finance. In the most recent WIM review in 2019, the G77 and China adopted a unified position to enhance support and action for L&D funding (Manke et al. 2020). Civil society groups have also continued to raise the issue of L&D finance in the post-Paris talks, with 152 NGOs signing an open letter for the creation of L&D funds beyond insurance in the regime (ActionAid 2019). Reflecting on the impasse in L&D finance, Huq (2021) notes that vulnerable and low-income countries will raise the issue of concrete financial mechanisms for L&D at the upcoming COP26 negotiations in Glasgow this year.

Thus, the L&D case study sheds light on the struggle of counter-hegemonic actors that aim to subvert relations of inequality in the regime dominated by neoliberal governance. Although the non-integration of distributive demands stripped counter-hegemonic frames of their potential to transform unequal power relations, the struggle for distributive justice within L&D will continue in future negotiations.

Conclusion

In this research paper, I have argued that the transformative potential of counter-hegemonic frames has been constrained due to the non-integration of distributive justice demands within the dominant neoliberal structure of the regime. Although frame recognition indicates a shift towards justice within L&D, the integration of counter-hegemonic frames has not resulted in distributive justice policy gains. Moving beyond the impasse on L&D finance is crucial because the lack of adequate, long-term finance undermines the implementation of L&D measures. Establishing concrete and clear funding mechanisms should be a key priority in the upcoming COP26 negotiations in Glasgow. In addition to setting equitable financial commitments from wealthy states, the WIM ExCom should also consider proposals for innovative sources of finance to upscale L&D finance. While finance remains a contentious issue among Parties, the L&D case demonstrates that not responding to distributive justice will have significant implications for the world's poorest and most vulnerable populations who are already experiencing the impacts of climate change.

The case of L&D highlights how counter-hegemonic frames gain traction in multilateral regimes, mobilising civil society actors and states to adopt a coordinated position that subverts power structures. While this research paper has assessed the recognition and distributive justice outcomes of frames within L&D primarily at the Warsaw and Paris negotiations, future research should also assess counter-hegemonic frame integration within and beyond L&D across longer timeframes. As Cipler (2017) notes, focusing on counter-

hegemonic frame outcomes across longer timeframes will help provide detailed insights into the specific challenges and opportunities within each time period, as well as the evolution of frames and actors engaged in counter-hegemonic resistance.

In conclusion, distributive justice is important to transform relations of inequality but remains difficult to integrate within the dominant structure of the regime. Paying attention to the interaction between justice and power in the international climate regime will be significant to theorise how the dominant neoliberal hegemonic structure is subverted or reasserted in the post-Paris era.

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