



Department of Political Sciences

Chair in Political Sociology

**Paris 2015 COP21: the role of non-governmental actors in  
shaping the international politics of climate change**

Supervisor:

Prof. Michele Sorice

Candidate:

Anna Finiguerra

075222

Academic Year: 2016-2017

## TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER I Global Governance, International regimes and non-state actors	
1 Issues in global environmental politics.	3
1.1 Environmental policy as a long-term policy issue	5
1.1.1 Time inconsistency	5
1.1.2 Domestic politics	7
1.1.3 International anarchy	8
1.2 The role of NGOs in international governance	9
1.2.1 NGO diplomacy: assessment of its influence	11
CHAPTER II The International Climate regime: from the UN Framework Convention on Climate Change to the Paris Outcome	
2 The UN Framework Convention on Climate Change: a brief history	14
2.1. From the Convention to the Kyoto Protocol	16
2.2 The road from Kyoto to Paris	19
2.3 Common principles but different approaches of the two Treaties	22
2.3.1 The principle of “ <i>common but differentiated responsibilities</i> ” and binding commitments	24
2.3.2 Enforcing compliance under the two legal instruments	26
CHAPTER III Participation and influence of non-governmental actors at COP21	
3 Patterns of NGO participation to COP 21	28
3.1 The role of U.S. based NGOs	30
3.1.1 Information strategies	31

3.1.2 Leverage strategies	32
3.1.3 Accountability strategies	33
3.2 The long-term goal of temperature reduction (inclusion of stock take, NDC levels)	34
3.3 The inclusion of human rights in the text	37
3.4 Overall assessment of NGO influence	39
CONCLUSION	41
BIBLIOGRAPHY	44

## INTRODUCTION

Climate change is one of the most prominent issues on the international political agenda today. Although this is the case, the implementation of effective regimes aimed at tackling the problem poses several challenges. The most common pertain to the voluntary character of the ratification of any such agreement, which might, on account of few non-participatory parties, lose much in terms of effectiveness and legitimacy, or be limited to the adoption of minimum common denominator policies, due to the accommodation of the preferences of a large number of countries. Other issues relate to the very character of environmental politics and its long-term features, which make implementation of international policies both inconsistent with the policy cycles of domestic politics, and jeopardised by the anarchy governing international relations. Finally, another hurdle that effective environmental policies need to overcome with respect to climate change is the question of legitimacy and differentiation that accompanied the climate debate since the first. Developing countries, who have contributed in minor part to anthropogenic environmental degradation, refuse to bear the negative consequences of emission cuts at the expense of their development and poverty reduction plans. Developing countries, on the other hand, although they recognise their greater responsibility and capability to tackle climate change, rebuff this argument on the grounds that climate change is a global issue and should as such be addressed globally. Furthermore, they point to countries like India and China, who, while being still considered among the number of developing countries have taken the lead in the list of the planet's greatest emitters alongside the United States. This conundrum has stood in the way of meaningful action on the issue of climate change for decades.

The Kyoto Protocol, one of the first binding legal agreements committing countries to a set of reduction targets of emissions of greenhouse gases, faced precisely the challenges lined out above and according to many commentators (Ullal, 2013; McPherson, 2012; Genest, 2012) fell short of overcoming them, allowing greenhouse gases emissions to increase globally at extraordinary speed. The Kyoto regime was supposed to enforce environmental restrictions on pollutant gases emissions from 2005 to 2012, what is now called the first compliance period, but was later extended until 2020, when its successor, the Paris Agreement, was expected to enter into force (McPherson, 2012: 222). The Paris Agreement was hailed as an entirely new era in international climate governance, reshaping the implementation of the Framework Convention on Climate Change, under

whose aegis it was negotiated, in such a way as to involve all countries, irrespective of their state of development, in the fight against climate change. The reframing of the principle of differentiation was the outcome of a long period of negotiations that ultimately led to the COP21 summit, in which the Paris Agreement was finally approved. Instead of providing a binding set of quantitative or qualitative emission targets, the Paris Agreement has a more complex structure, committing countries to an international process of submission and review of nationally determined environmental policies that have as their only requirement that of being increasingly more ambitious as time goes on. This innovative structure, that combines top-down and bottom-up elements, has allowed for the participation of an unprecedented number of countries in the current international climate regime. Before the end of the negotiations, more than 180 countries had already submitted their intended nationally determined contribution and future emission reduction plans, in an unprecedented wave of support for the newfound climate consensus. At the time of writing, the Paris Agreement has been ratified by 147 of the 197 parties to the Framework Convention on Climate Change, and has entered into force scarcely less than a year after its approval in December 2015 (UNFCCC, 2017).

Many commentators, faced with what has been enthusiastically termed an unmitigated success, ascribed the unparalleled international support of the agreement to the increasingly important role that non-governmental organisations play in climate change negotiations (Hale, 2016; Falkner, 2016; Jacobs, 2016).

Given that the Paris Agreement represents a new frontier in international environmental governance and the increasing urgency of the climate question, I will analyse to what extent the action and influence of non-governmental organisations has been determinant in shaping the features of the Paris Agreement. Their influence, drawing on the work of Corell and Betsill (2008), will be assessed through five indicators. Their capacity to reframe issues and keep them on the negotiations agenda, their interaction with key actors and their ability to influence their views, and finally whether and to what extent the agreed outcome reflects their preferences and accounts for their activity in its implementation. Before analysing the involvement of NGOs in the COP 21 negotiations, I will lay out the hurdles that face effective environmental governance as a result to the long-term character of environmental politics and an overview of the long decades of conferences that streamlined the evolution of the climate change discourse and that ultimately brought the international community to design and approve the Paris Agreement.

# CHAPTER I

## Global environmental politics and the influence of non-state actors

### *1 Issues in global environmental politics*

The field of environmental politics, and more generally, the issues of climate change and sustainable development, have taken up in recent years a great portion of both the domestic and international policy agenda of states. The rising awareness of climate change, global warming and of all the disastrous consequences that these phenomena are likely to have on the human environment have brought countries to the negotiations table time and again, in an effort to tackle the challenge of creating an effective environmental protection and adaptation policy. The issues at hand in conferences regarding climate change are varied. They span from mitigation, which consists in the reduction of human actions that have negative effects on the environment, the emission of Greenhouse Gases (GHG) for instance, to adaptation, which is to say the drafting of policies to confront the already made damage to the environment and the ongoing changes to the Earth's climate. Other important aspects of the climate agenda pertain to provisions for technological transfer and allocation funds to developing countries in an effort to provide them with the tools necessary to meet the challenges of climate change.

At the twenty-first Conference of the Parties to the UN Framework Convention of Climate Change, the COP21 held in Paris in 2015, after more than thirty years of continuous international conferences and bargaining, finally all major stakeholders had reached the common understanding that climate change could no longer be ignored and effective and swift action to combat it was necessary.

The feeling of urgency that animated the COP21 is obvious if one considers the opening speech at the Leader's Event given by the U.S. President Barack Obama, in which he declared climate change the "looming threat of this century" and that the current generation is the last one that can "do something about it" (UNFCCC, 2015b). Nevertheless, there is a marked difference between countries in their approach to UNFCCC negotiations. If one compares the U.S. president's speech with that of Xi Jinping, it becomes clear how the South of the world is ready to contribute to the fight against climate change only on the condition that its development and its battle against poverty will not come second to such a commitment. At the same event, the Chinese President was very emphatic in highlighting the need for both a binding agreement to combat climate change and the continuing obligation of developed countries to shoulder

a greater share of the responsibility, while forging a path for the developing countries to follow in their quest for sustainable development (Ibid.).

The very notion of sustainable development was born in an effort to reconcile the opposing views on climate change that dominated the North and South of the world at the time when environmental issues first appeared on the international agenda (Najam, 2005). As many scholars have pointed out (Hovi et al, 2009; Sand, 1990) environmental protection truly consists in a global public good, particularly subject to the danger of free riding. Many actors, when faced with a choice to comply with costly environmental policies or not to comply, may be tempted to scale back their contribution while enjoying all the same the fruits of others' efforts. This has held true also for the debates surrounding the Kyoto Protocol, the first legally binding environmental treaty adopted in 1997, alongside unresolved questions of distributive justice and fairness that have plagued each wave of negotiations. A clear example of such disputes was the United States' refusal to actively participate in the Protocol as long as developing countries were not contributing to the reductions of emission, while India and China, the greatest emitters among developing countries, argued that, as long as the US was not a party to the treaty they would not submit their economies to the costs of environmental restructuring (Ullal, 2013:104)

The clash between the global North and South in terms of climate change and pollution reduction has been a constant of international environmental politics. The reasons why Southern countries have been historically resistant and only limitedly accepting of environmental regimes are often based on questions of the legitimacy of the climate change question itself rather than the effectiveness of the regimes employed or of the institutions that uphold and monitor compliance (Najam, 2005). Countries that consider themselves part of the global South seem to deem, or at least to have deemed, questions of pollution and climate change as an illegitimate policy area that contributed nothing to what were the most pressing issues on their agenda, namely the reduction of poverty through development and industrialisation (Ibid.). The South's resistance to any contribution to a debate regarding the effectiveness of international environmental regimes was so deep as to force environmental protection talks to focus more on questions of legitimacy and equity. Consequently principles such as that of "common but differentiated responsibilities", and "polluter must pay" at the basis of the Kyoto Protocol, which will be analysed later in this study, were born.

### *1.1 Environmental policy as a long-term policy issue*

Questions of legitimacy are not the only obstacles standing in the way of the negotiation and subsequent implementation of international regimes regarding environmental issues. The highest hurdle that international environmental regimes face is linked to the very nature of environmental politics as a long-term issue (Hovi et al, 2009; Sprinz, 2009). Drawing from Sprinz's analysis, long-term policy problems are defined "as public policy issues that last at least one human generation, exhibit deep uncertainty exacerbated by the depth of time, and engender public goods aspects both at the stage of problem generation as well as at the response stage." (2009:2), in this sense, climate change possesses all the distinctive characteristics of a long-term policy issue. First of all, many environmental questions, such as climate change and loss of biodiversity, have consequences that reach far into the future, and the assessment of the consequences of human action might easily take more than a generation. Secondly, due to the vast timeframe that characterises environmental issues and the implementation of environmental policies, decision-makers face a significant degree of uncertainty that leads them to choose policy outcomes based on future projections of which they might never get confirmation. The effects of a well-designed environmental policy might skip altogether the generation that implemented it, to be enjoyed by those that come after. The same type of reasoning applies also to the production of environmental degradation. Past generations, for instance, by emitting unchecked levels of carbon into the atmosphere, benefited from industrial development while condemning the succeeding generations to grapple with its adverse consequences. Finally, the implementation of environmental protection policies is subject to public goods problems, where the incentives to free ride, while also enjoying the benefits of the costly and arduous environmental reforms of a few leading countries might be too high to engender effective and wide participation in an environmental regime.

Scholars analysing the issues that face environmental policy makers have highlighted three main challenges to be overcome if a stringent, widely supported and effective environmental international regime is to be created (Hovi et al, 2009): time inconsistency, domestic politics and international anarchy. In the next sections, I will look at each of these in turn.

#### *1.1.1 Time inconsistency*

Time inconsistency relates to the fact that a policy implemented at a certain point in time might seem the best option at that moment, but afterwards other circumstances might

tempt decision makers to employ the same resources to a different end, thus “to renege on earlier promises” (Hovi et al, 2009: 22). In the case of climate change politics, for instance, actors drawing up a long-term plan to combat emissions and substitute the current carbon-based economy with a more environmentally sustainable one might find that their long-term policy outline will enjoy scarce credibility and support due to its long-term character. Any policy aimed at fighting climate change will yield benefits only in the long-run and will probably risk of coming second to other problems that arise in the interim, which will have to be addressed and ultimately cause policymakers to abandon their initial plans on climate change due to resource redirection. This does not mean that the climate change policy is deemed unbeneficial due to the acquisition of new information, but rather it is aborted due to a conflict between the cost-benefit ratio in the long-run and the same cost-benefit analysis in the short-term. In other words, “time inconsistency is caused by incentives to abandon or defect from a plan that is believed to be optimal over the long-term, in order to achieve short-term gains at specific points along the way” (Underdal, 2010: 2).

In their seminal paper about the challenges faced by contemporary political actors when trying to implement environmental politics, Hovi et al (2009) also sketch some possible solutions to overcome the issue of time inconsistency, although they do cast some doubt about the actual feasibility of some of these options (Hovi et al, 2009: 24). The first solution proposed is to avoid the possibility of backtracking by ensuring that there is no other option available or by making those alternatives seem more costly and less beneficial than the long-term environmental policy itself. A clear example of such an attempt is strictly linked to technological progress; once a new low emission technology has been released on a market and installed, it would make little sense to invest in a more polluting one after some time. The second solution analysed by Hovi et al (2009) is the so-called “strategy of tying hands” (Ibid: 23). It consists in forcing even future lawmakers to abide to a set of principles or rules that does not allow them to deviate from a given policy stance (Ibid: 24). The last option that is open to policy makers in order to overcome the time inconsistency hurdle is to ignore new information that might lead them to abandon their initial environmental policy stance. This strategy is called “rational ignorance” (Hovi et al, 2009: 24), and it is all the more effective the more actors are committed to their initial policy plan. Tackling the issue of time-inconsistency is rendered even more hazardous by its close connection with the domestic politics issue, to which I now turn.

### *1.1.2 Domestic politics*

Domestic politics influence decision makers in relation to environmental politics in two ways. Firstly, the very cycle of domestic politics (e.g. election cycles) leads actors to prefer to tackle short-term issues that might yield immediate gains and to avoid more long-term projects that might impose costs on their constituency with scarce if no chance of reaping the benefits, which further exacerbates the time inconsistency problem laid out above. Secondly, policy making in any given polity is strongly influenced by how power is distributed among different actors, stakeholders and interest groups and which rules govern the aggregation of such different preferences and the implementation of political outcomes (Hovi et al, 2009: 25).

The time scope required for achieving effective environmental policies is much longer than the life span of any national government, no matter how well disposed it might be toward addressing issues like climate change. Furthermore, the constant changes in the governing bodies together with swings in the public agenda and public opinion are not conducive to any environmental policy being sustained over long periods of time. As suggested by Downs (1972) cited in Hovi et al (2009: 26), the public is unlikely to focus its attention on any issue that does not affect it directly, requires a considerable amount of effort sustained over time and of which it is not reminded constantly. Climate change, according to Hovi et al's (2009) analysis, fits those requirements relatively well.

As for the internal constraints that might hinder environmental policies, path dependency is certainly one of them. The natural resistance of decision makers to change course might be further exacerbated by sets of rules, with regards to the law-making process for instance, that are so complex and demanding as to discourage governments from action. Finally, the distribution of costs and benefits of a given policy might also have the final say in whether that policy is approved or not.

Studies have repeatedly shown that policies which distribute diffused benefits to the population, while burdening a small portion of the polity with the costs, will be much less likely to be adopted than policies that distribute a very definite set of benefits to a small portion of the population while its costs are diffused or even undetermined. This dynamic, linked to problems of collective action, stands in the way of effective long term environmental policies for the simple enough reason that the real of environmental politics is richer in the former type of policies than the latter. While the long term goal of combating climate change might be universally seen as beneficial, the single policies

implemented to reach the final aim of the plan might negatively affect other activities, often pollutant activities at different level of the economic production chain, ensuing the mobilisation of particular sectors against it. Once sectors of the population have mobilised to protect their interests from a perceived loss, the issue of environmental protection will be framed and re-framed several times coming at risk of being seen as a less than ideal policy outcome to aspire to (Hovi et al, 2009: 28).

There are several possibilities to be put into practice to overcome the obstacle of domestic politics. Among those suggested by Hovi et al (2009:29) three lines of domestic reform are particularly striking. Firstly, the authors propose to enhance the action of institutions that build consensus and “state of the art knowledge” (Ibid.) as the International Panel on Climate Change, secondly, they propose to build on the strengths of environmental ministries, agencies and non-governmental organisations, finally, they suggest to put into practice a regular environmental review to be carried out by national authorities in an effort to keep the issue on the agenda and either enhance or scrap current policy choices. This particular means of review, also called “naming and shaming” when public concern is particularly high, has indeed been put into practice, at least at the international level, by the Paris Agreement approved under the aegis of the COP 21 held in Paris in 2015.

### *1.1.3 International anarchy*

As stated elsewhere in this chapter, environmental protection poses the two-fold difficulty of being both a long-term issue with specific costs and diffused benefits and a true public good, which increases exponentially the incentives for actors to free ride when it comes to implementation of effective measures. The issue of free riding is especially problematic when considering the unlikelihood of effective enforcement being implemented at the international level. In multilateral governance regimes, the inclusion of strict enforcement provisions in the text of any treaty is usually possible only when there are few incentives for member states to free ride or renege on their commitments. Otherwise, where there is an actual incentive to only pay lip service to the aims of the treaty, it is possible that either the enforcement structure will be scrapped or some parties will not become part of it, thus weakening the effectiveness of the treaty itself (Hovi et al, 2009:30-32).

Analysing the same issue, Sand (1990) comes to the conclusion that, as a rule of thumb, international anarchy usually leads to bottom line standards being adopted and delays in the adoption itself through the regular treaty ratification procedure. In order to have as many states as possible participating in the regime, usually negotiators compromise and

water down the most stringent requirements of the agreement, defeating the purpose of creating an effective environmental regime, which is what brings states to the bargaining table in the first place.

Studies have shown that regimes that are more successful seem to have particular characteristics such as higher transparency, a higher number of watchdogs that avoid non-compliance rather than punish it, and an administrative framework that exploits pre-existing institutions scaling down implementations costs (Mitchell, 1994). Sand (1990) expands on this area of research by advocating several strategies that might prove useful when facing the problem of bottom-line commitments. He suggests for instance the creation of selective incentives only for member states submitting to the most taxing part of the agreement, such as access to funding and technology or equitable burden sharing and asymmetric agreements, in order to avoid issues of legitimacy and taking into considerations the respective capacities of countries. Regionalisation is also another possibility taken into account by Sand (1990), although he warns of the danger of a trade-off between the number of countries involved and the relative ease of accommodating of all their preferences and the effectiveness of the regime itself. Another tack is the promotion of over-achievement (Ibid.). Over-achievement in the case of environmental regimes relates to how some countries or some actors might be willing to adopt more stringent requirements than those settled in an international agreement, enabling them to somehow bring other states to follow suit thanks to the positive public attention they might reap afterwards.

### *1.2 The role of NGOs in international governance*

If the top down implementation of environmental protection measures and multilateral negotiations among governments seem to be doomed to fail from the very beginning, scholars (Dimitrov, 2016; Hale, 2016; Falkner, 2016) have seen in the ever-increasing involvement of non-governmental organisation in international environmental negotiations the promises of a more effective and more participatory model of environmental governance. The next section will analyse NGO involvement in international negotiations and how their influence can be assessed in the international arena.

NGO involvement, understood as the involvement of organisations not born under the aegis of intergovernmental agreements (ECOSOC, 1946 as cited in Charnovitz, 1997: 252), in international conferences and organisations born in the UN family was

institutionalised as early as the drafting of the UN charter itself, in 1945. The provision regarding NGOs advisory capacity was inserted in article 71 of the Charter and it opened the door for NGO involvement in conferences and negotiations as advisors and experts in the field. Once this provision was enshrined in the official UN Charter, at their birth, other UN agencies, such as the UN Educational, Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO) and the International Monetary Fund (IMF), followed suit in their acceptance of NGOs as relevant stakeholders which could serve in international politics as both advisors and collaborators (Charnovitz, 1997: 254). There seems to be substantive agreement in the literature in considering the source of NGO influence in environmental negotiations as their capacity to provide technical information and expertise that state actors may lack, reducing uncertainty and proposing innovative solutions that might not have originated in formal bureaucratic channels (Böhmelt, 2013; Betsill and Corell, 2008). Nevertheless, the activity of NGOs remained quite constrained until the late 70s, when finally non-governmental organisations, especially in negotiations pertaining to environmental issues, were allowed to participate in plenary meeting, present their views to all other actors and actively participate as observers in the formal negotiating processes (Charnovitz, 1997: 261-263).

The lack of any effective decision making powers in the hands of non-governmental organisations during international negotiations (Betsill, 2002: 50) has led such actors to exert their limited amount of influence, economic in the case of businesses and informational in the case of non-profit organisations (Betsill and Corell, 2008: 24), in a number of different ways. The strategies adopted by these actors may vary considerably, spanning from persuasion, threats, to the infliction of non-violent punishments. (Ibid: 26).

The rising importance of NGO diplomacy, understood as the representation of interest constituencies which are not defined spatially but on the basis of common values, norms, and concerns (Betsill and Corell, 2008: 2), is explained by Chanovitz (1997: 265-266) in the following terms. First, globalisation at large has led to the recognition of the existence of global issues that need to be tackled in concert by actors, thus leading to the expansion of intergovernmental negotiations that affect domestic policy. Second, the appearance of worldwide media has enabled NGOs to publicly express and share their views reaching an unprecedented share of the globe's population. Finally, the growing spread and acceptance of democratic norms and values have increased the wish for transparency of international organizations and the demand for more opportunities for public participation.

### *1.2.1 NGO diplomacy: assessment of its influence*

Although the increasing participation of NGOs in the international politics of the environment is unquestionable, it remains to be seen whether and how these organisations influence the outcome of international conferences and negotiations, and which might be the determinants of their success or failure to have their constituents' preferences taken into account. Scholars have often focused their analysis of the role of NGOs in international negotiations on several factors taken singularly, their access to negotiations, their actions or the resources on which they relied on in order to mobilise (Betsill and Corell, 2008: 9), disregarding to actively define either how their influence should be defined and more importantly how it should be measured (Corell and Betsill, 2001: 87). For the purpose of this study, firstly NGOs will be defined as follows, "an NGO is an organization that (1) is not formed by intergovernmental agreement, (2) has expertise or interests relevant to the international institution, and (3) expresses views that are independent of any national government." (Oberthür et al, 2002 cited in Betsill and Corell, 2008: 4), thus purposefully overlooking any distinction between business interest groups, social movements, citizens' associations, think tanks and research centres. Secondly, influence will be considered as the intentional transmission of information from one actor to another that ultimately diverts the latter's behaviour from the path that would have been followed in absence of such information (Corell and Betsill, 2001: 51). This definition opens two lines of analysis, one regarding the transmission of information, relevant knowledge and expertise from NGOs to states, and the other the subsequent change in behaviour of other actors, that is to say change in states' perspectives and behaviour, which then translates to the procedural or substantive content of the agreement reached.

The operationalisation of NGOs' involvement and action in the negotiations is carried out through five main indicators. Firstly, NGOs' influence in framing or re-framing environmental issues ahead of or during the negotiations, issue framing is then strictly related to agenda setting, which instead concerns which issues are discussed in the negotiations themselves and which are kept off the agenda during meetings. The third indicator is related to NGOs' influence on the position of key actors, which in the case of international summits are none other than states. The last two indicators relate to the outcome of the negotiations, one concerns the procedural aspects of the outcome, namely "Does the agreement create new institutions to facilitate NGO participation in future

decision making processes? Does the agreement acknowledge the role of NGOs in implementation?” (Betsill and Corell, 2008: 35), the other the substantive aspects of the agreement reached.

The different scores on each indicator are then be used to assess whether they had a low, moderate or high level of influence. Low levels of influence correspond to NGOs that might have participated in the negotiations but had little overall effect on any of the five indicators. Moderate influence levels are instead assigned to NGOs that managed to exert their influence with regards to at least the first three indicators, issue framing, agenda-setting and key actors’ positions. Finally, NGOs that prove able to influence the substantial and procedural characteristics of the final agreement are considered to have been highly influential in the negotiations.

Relying heavily on this framework, this analysis will focus on the role of NGOs based in the United States of America and their relative influence during the negotiations of the Paris Agreement, debated and approved during the COP 21 held in Paris in the last months of 2015.

The sample of NGOs taken into consideration corresponds to all NGOs based in the United States participating to the Conference with official observer status in the UNFCCC, although this strategy could prove to be subject to bias. Böhmelt (2013) argues in fact that the participation of non-governmental actors to the UNFCCC fora of negotiations is strictly dependent on factors that might be outside the scope of study of scholars interested in assessing the influence and impact of said organisations. The resources at the organisation’s disposal might heavily influence access to negotiations, and also the disposition of the relative government this group seeks to interact with. This might lead scholars to overestimate the power and influence that NGOs enjoy in environmental negotiations, whereas either the states act as puppeteers exploiting the actions of NGOs to achieve their own policy preferences or they hinder the participation of NGOs in an effort to reduce the likeliness of a policy outcome that does not reflect their objectives.

In the next chapter, I will lay out the main characteristics of both the Paris Agreement and its predecessor, the Kyoto Protocol. I will highlight how the former represents a significant break from the provisions enshrined in the latter, owing to a substantial shift in the approach to environmental politics of both developed and developing countries, while at the same time respecting the founding principles of the United Nations Framework Convention on Climate Change (UNFCCC). Finally, in the third chapter I

will analyse the actions and the strategies undertaken by NGOs during the COP21 conference and whether they were at all effective in pursuing their goals.

## CHAPTER II

### **The International Climate regime: from the UN Framework Convention on Climate Change to the Paris Outcome**

#### *2 The United Nations Framework Convention on Climate Change: a brief history*

Although the first World Climate Conference was held as early as 1979 (Giorgetti, 1999), climate change became an integral part of the international agenda formally in the 1990s. During this decade, the United Nations promoted a long series of Conferences and projects that had as their main objective that of shedding light on environmental issues and fostering cooperative action in order to prevent further environmental degradation and design policies that harmonised development and sustainability.

The first step in designating climate change as a serious issue, worthy of the international community's attention, was taken by the United Nations Environmental Programme (UNEP) with the creation of the Intergovernmental Panel on Climate Change (IPCC), a collective body of experts tasked with designing the science of climate change, giving reports on the state of the environment and suggesting possible policy proposals to address the issue (Gupta, 2010).

The ground-breaking findings of the IPCC regarding global warming and the rising sea levels were also accompanied by reports on the consequences that such phenomena would have for human health, ecological systems and the socio-economic sector. The greatest danger that climate change posed to the human race was not only the vastness of the transformations that were likely to occur due to anthropogenic pollution but also the swiftness with which they were expected to manifest, rendering the prospect of natural adaptation almost an impossibility (Giorgetti, 1999).

In the years that followed, climate change took up a considerable portion of the international agenda, and the issue was articulated and framed along several different lines that remained at the basis of the international dialogue and were later enshrined in the United Nation Framework Convention on Climate Change adopted in 1992 (Gupta, 2010).

Even though the UNFCCC was a legally binding agreement on signatory parties, the necessity to involve as many countries as possible led negotiators to adopt a set of principles and norms to guide further cooperation on the issue rather than stringent requirements for immediate action (von Stein, 2008). As a result, the Framework on

Climate Change, while it does call upon parties to draw plans for the reduction and control of emissions of Greenhouse Gases under pre-industrial levels and to create emissions inventories, does not create any stringent commitment for parties upon which to act. Its main aim, as specified in the text of the agreement itself, is quite generic, “achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (UNFCCC Treaty, art 2 as cited in von Stein, 2008: 247). The lack of a specific target or set of targets to be achieved by parties made not only implementation dependent on the good will of states participating to the Convention but also enforcement of these bland commitments impossible.

The reason for such a lack was the fact that the United Nation Framework Convention on Climate Change was conceived as a legal background for the subsequent drafting and ratification of a legally binding international agreement aimed at combatting climate change, complete with specific targets and responsibilities for countries to respect and a substantial enforcement procedure (Giorgiotti, 1999).

The principles laid out in the UNFCCC were several and all a product of the decade of international discussions and bargaining that preceded the adoption of the Framework Convention. To quote Gupta (2010: 640) the UNFCCC included:

“the principles of common but differentiated responsibilities (CBDR) and respective capabilities; attention to be paid to the specific needs of the particularly vulnerable developing countries; the adoption of the precautionary approach, subject to the cost-effectiveness principle; the recognition that all countries have the right to, and must pursue, sustainable development; and the need to support an open, international economic system”.

These principles, in particular that of “common but differentiated responsibilities” and the focus on the leadership of developed countries, reflected a substantial division between the North and South of the world and also the various coalitions that had sprung up in almost a decade of international summits (Ibid.).

These tensions, which had split the forum of negotiations in three coalitions (developed countries roughly corresponding to OECD membership, the G77 representing 130 developing countries and the Alliance of Small Island States), were transposed in the UNFCCC. The Convention distinguished from Annex I countries, the developed countries, which were expected to take active part in the soft commitments laid out in

1992, and Annex II countries, which were devoid of any substantial duty vis à vis the Convention and could instead reap the benefits of all the provisions aimed at ensuring their continued but sustainable development.

Although this differential treatment proved to be problematic in the following decades and posed the basis for many defections from and disagreements about future more stringent agreements (Gupta, 2010), the UNFCCC did achieve its main aim of creating a lasting framework to foster and guide further cooperation on the issue of climate change. The bodies established under the aegis of the Convention, especially the Conference of the Parties (COP), have become an active forum for environmental cooperation. While subject to continuous oscillations and brief setbacks, the COP meetings have effectively brought the whole international community to upscale not only their singular efforts to tackle climate change but also to design stronger and more definitive paths to mutually beneficial cooperation.

### *2.1 From the Convention to the Kyoto Protocol*

The first meeting of the Conference of the Parties (COP), the body established and charged by the UNFCCC to draft and approve a binding and substantive agreement on climate change, was scheduled to take place in Berlin in 1995 (Giorgetti, 1999: 207).

The product of such meeting was not a new protocol as many had hoped but rather an agenda with a timetable for further negotiations and some starting points that should be included in any future agreement. This plan, commonly called the Berlin Mandate, inaugurated a new period in the international negotiations under the aegis of the UNFCCC (Ramakrishna, 2000). Along the same lines of the Framework Convention itself, the Berlin Mandate reflected the diverse commitments formulated for developing and developed countries. It called only on the latter category of states to elaborate effective measures to combat anthropogenic pollution and to establish a scheme of reduction objectives with set quantities of Greenhouse Gases and a specific timeframe spanning from the year 2005 to the year 2020 (Ibid: 53). Together with the new agenda for the subsequent COP meetings, the parties to the Convention also created an Ad Hoc Group on the Berlin Mandate, a body with the sole purpose to start early negotiations for a new substantive protocol (Breidenich et al, 1998: 318). The work of the Ad Hoc Group on the Berlin Mandate culminated in the approval of the Kyoto Protocol, a substantive and binding agreement on climate change, approved in 1998 at the COP3.

In the meantime, the debate regarding environmental degradation turned again to matters regarding the legitimacy of the environmental question and in particular to the legitimacy and accuracy of the climate change science. Before the parties met in Geneva at the second COP summit, a lobbying umbrella group for big businesses, the Global Climate Coalition, representing a large number of companies belonging mainly to the oil and fossil fuel industry (Newell and Paterson, 1998), went active with the purpose of hindering the actual approval of a legally binding protocol (Ramakrishna, 2000: 53).

The strategy used by the Global Climate Coalition and other industry lobbies was extremely straightforward. Given their “positional influence” (Marchetti, 1996 cited in Newell and Paterson, 1998: 687), that is to say the influence they exert by the sheer power of their existence, by grace of their overarching activities and interests in the economic sector, such lobbies exploited the attention they were given by governments to turn their environmental policies on their heads. The main arguments raised by these business coalitions against the flurry of action and bargaining that had taken place in the international community were several. Firstly, these businesses doubted the accuracy of the climate science, questioning all actions taken on the basis of uncertain scientific data, so much that they even funded campaigns in the media negating the evidence supporting the danger posed by climate change (Newell and Peterson, 1998). Failing to sway public opinion in this sense, these interest groups turned to forecasting disastrous economic consequences if any actual treaty limiting greenhouse gases’ emissions was ratified by both developing and developed countries, framing them in terms of job losses, increased prices for manufactured goods and energy and significant reductions to GDP and growth (Ibid: 683).

The response of the international community was uncompromising (Ramakrishna, 2000). On the one hand, the IPCC published its Second Assessment Report, which had the effect of laying waste to the doubts raised by the industrial lobbies on the necessity of state intervention to limit emissions, confirming the anthropogenic character of the climate change issue (Giorgetti, 1999). On the other, the parties to the Framework Convention gathered in Geneva felt the need to support both the standing of the IPCC as the scientific authority on climate change and the serious commitment of states to continue negotiating until the successful approval of a legally binding protocol. The product of such intentions was the Geneva Ministerial Declaration (Ramakrishna, 2000).

The positive climate conducive to finally reaching a consensus on the future Kyoto Protocol was also engendered by the change of heart of the United States, which were for

the first time supportive of a binding agreement (Giorgetti, 1999). After almost a decade of hindering negotiations, the US were finally ready to endorse binding reduction targets thanks to the election of President Clinton, who supported enthusiastically environmental policies (Ramakrishna, 2000).

The terrain was finally ready for the formal negotiation and approval of the Kyoto Protocol.

The Kyoto Protocol was the first legally binding agreement ratified as a response to the looming threat of climate change. The protocol, signed in 1997, set a specific reduction target of several greenhouse gases at 5% below the 1990 level, committing countries to this effort from 2008 to 2012. The Protocol did not distinguish among different greenhouse gases (Ullal, 2013), but it did distinguish among countries creating two different regimes, one for developed countries (Annex I countries) and one for developing countries (Non-Annex I countries) (McPherson, 2012: 226).

Under the Kyoto protocol, developed countries were under obligation to reduce their GHG emissions and provide the so-called carbon sinks in order to eliminate carbon dioxide from the atmosphere but also to share funding, information and technologies with the developing countries in order to help them reach their objectives of sustainable development (Genest, 2012: 536). On the other hand, developing countries were only encouraged to implement and comply with the Kyoto Protocol, and they faced no effective constraints (Ibid.). This unequal sharing of burdens imposed by the UNFCCC under the principle of “common but differentiated responsibilities” (Ullal, 2013), and subsequently by the Kyoto protocol, was an attempt to involve as many countries as possible in the agreement, although unfortunately it was also a heavy blow to the effectiveness of the regime itself (Sand, 1990).

The instruments Annex I countries were allowed to use in order to reduce emissions were not directly specified by the protocol (McPherson, 2012: 226). Market based tools were established as a flexibility mechanism, such as carbon trading, the possibility of joining together in common ventures whose environmentally positive externalities would be split among the participating countries in terms of compliance to the protocol, and a clean development mechanism which allowed developed countries to invest in green projects in developing countries (Genest, 2012: 538).

The effectiveness of the Kyoto Protocol as an appropriate regime to tackle the issue of climate change has been put into question repeatedly over the years in which it has been in force (Iwata and Okada, 2014). Studies have attempted to show how the existence of

and compliance to the Protocol might provide an explanation for the recent trends in carbon emission in Annex I countries, but the results have been mixed at best.

## *2.2 The road from Kyoto to Paris*

After the arguably successful entry into force of the Kyoto Protocol, the parties to the Framework Convention and the international community at large started preparing for the negotiations and approval of a successor to the Kyoto commitments. It was hoped that in time a new agreement could and would solve those issues that its predecessor had failed to address, namely the involvement of the biggest polluters such as the US and China, but also the status of developing countries vis-à-vis efforts to curb emissions.

The process that would bring to the approval of the Paris Agreement at the end of 2015 at COP 21 consisted in a long series of meetings that created the foundations on which the Paris Agreement itself stands, in a time span of more than 10 years and more than 15 Conventions of the Parties. Although states convened together on several occasions with the objective of reaching consensus on the structure of the future international regime for combating climate change, some analyses (Nespor, 2016) have identified in four COP meetings as many turning points in the build up to the Paris COP 21 in 2015. The first step in negotiating a new instrument to address climate change was taken in Bali at COP 13 in 2007. The result of the conference, the Bali Action Plan, was not as many had hoped a substantive and clear agenda to guide further negotiation on the issue of climate change. Rather, it offered a narrow track to guide parties to their meeting in Copenhagen scheduled to take place in 2009, where a new agreement on climate change was expected to be formally approved (Christoff, 2008). While there was some progress made in Bali, such as the agreement on new emission targets and the international consensus on the necessity of “deep cuts” in the quantity of greenhouse gases in the atmosphere (Ibid.), these achievements were marred by the fact that negotiations were divided in two parallel tracks, one for parties to the Convention and one for parties to the Kyoto Protocol. This split effectively hampered any efforts to bring more countries on board with extensive environmental commitments, upholding also the stark separation that both the Convention and the Kyoto Protocol had created between developing and developed countries in terms of their responsibilities in the fight against global warming. Before the approval and entry into force of a widely supported, effective climate change agreement, this fine line hindering a truly global response to climate change had first to be overcome (Nespor, 2016).

The Copenhagen conference held at the end of 2009 constituted a definite step forward in the process to enhance climate change governance, although early commentators hailed the summit as the umpteenth failure due to the non-legal character of its outcome (Bodansky, 2010). The Copenhagen Accord in fact accounted to a political agreement that had no formal status in the legal scope of the Framework Convention, in light of the fact that the Conference of the Parties only “took note” of such a documents, without actually adopting it (Bodansky, 2010; Nespor, 2016). Nevertheless, the Accord contained some points that all but laid the foundations for the Paris Agreement. It establishes a commitment to emission reductions compatible with the science and data provided by the IPCC, some groundwork for further financial and technological cooperation among countries and most importantly a system of “pledge and review” of the intended contributions that each country wishes to make in order to mitigate climate change.

The reductions targets inserted into the Copenhagen Accord, while they do not amount to specific quantitative objectives like those in the Kyoto Protocol, signal a paradigm shift regarding the interpretation of the principle of common but differentiated responsibilities as it had been declined first in the Berlin Mandate and then in the Kyoto Protocol. The future targets need be compatible with considerations of equity and sustainable development but this does not necessarily imply that all responsibilities should be shouldered by developed countries. On the contrary, if the main flaw of the Kyoto Protocol is to be overcome, that is to say the active involvement of only some developed countries that together represent almost 20% of the world’s emissions, all the international community needs to step up their contributions. Further progress also came into the form of the widespread willingness of non-Annex I countries to submit along with their Annex I peers their Nationally Appropriate Mitigation Actions (NAMA’s), instruments allowing each country to set their own goals, as deemed appropriate for their own economic and social circumstances. These NAMA would later become the basis for the Nationally Determined Contributions (NDC), which are enshrined in the Paris Agreement as substitutes for the quantitative targets present in the Kyoto Protocol. The system of nationally determined contributions is then subjected to a review that has as its final objective not only to ensure compliance with national targets but also to foster increasing ambition in the drafting of the contributions themselves (Falkner, 2016). This framework of “pledge and review” is one of the greatest innovations introduced in the Paris Agreement, and it goes to show the cooperative and “bottom up” approach of this new agreement vis-à-vis its predecessor, the Kyoto Protocol (Nespor, 2016).

The formal proposal of a “pledge and review” system came at COP 16 in Cancun a year after the meeting in Copenhagen. In this occasion, the Copenhagen Accord was also formally adopted by the Convention of the Parties, thus becoming an official document under the scope of the Framework Convention. Along with these two steps toward a working frame for the adoption of a new climate change agreement, the summit in Cancun signalled also other two substantial changes in the politics of environmental protection. The first was the newfound importance of the process of adaptation, which had been long considered a secondary policy problem with respect to mitigation, the second regarded loss and damages. Compared with the urgency of mitigating climate change in order to avoid facing the consequences of global warming, adaptation, which literally meant facing those consequences that the international community wanted to eschew, seemed too much like an “easy way out” (Nespor, 2016) and as such had been underestimated as an avenue of productive discussion. Nevertheless, some countries, in particular the Alliance of Small Island States, had been pushing for the acknowledgement of adaptation as a fundamental part of climate change politics, especially given their vulnerable territories and economies. The final seal on the recognition of adaptation as a core aspect of environmental politics came with the publishing of the IPCC fourth report. The IPCC stressed the need to take into account, not only damage that had already been done to the environment due to anthropogenic pollution, but also the possibility that mitigation actions might not be enough to contain it, rendering adaptation policies a bare necessity. The increased importance of the politics of adaptation paved the way for discussion on another topic that had been dear to the Alliance of Small Island States, that of loss and damage, namely a compensation system to the benefit of those less developed countries who found themselves most at risk due to climate change.

Although bits and pieces of what would later become the Paris Agreement were starting to take shape, the failure to hammer down a new instrument before the end of the first commitment period of the Kyoto Protocol in 2012, led the international community to extend the duration of the Kyoto regime for another period ending in 2020 (Rajamani, 2012). Finally, with the creation of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, at COP 17 in Durban, all the necessary steps to bring the international community closer to the adoption of a new legal instrument had been taken. This body was formally tasked with the duty to meet and research the options available for a new agreement on climate change, finishing their preparatory work before the end of 2015, when a new instrument was scheduled to be adopted by the COP. After almost

ten years of constant negotiations, it seemed that for the first time there was a clear and impending deadline for the approval of a new climate change agreement (Rajamani, 2012).

The subsequent COP meeting in Doha in 2012 confirmed what had already been decided in Durban and in all the precedent COPs (Fuhr and Schalatek, 2012). The Kyoto Protocol was renewed for a second commitment period and the new track for negotiations of its successor was to be the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), thus rewriting in terms of equity and applicability to all the commitments that had until that moment belonged only to Annex-I countries.

The final step toward Paris was the COP 20 in Lima, where countries agreed to submit their Intended Nationally Determined Contributions (INDCs) well ahead of the opening of COP 21 and where the issues of adaptation, loss and damage and climate finance were once again at the centre of attention. Crucial to this shift in the COP agenda was the Green Climate Fund, first created in Cancun to solve the problems of financing and technology transfer that had been hindered by mutual distrust between developed and developing countries (Nespor, 2016) and now fully operative (Grubb, 2015).

After eight years of disappointing COP summits and incessant negotiating, once again the international community seemed finally ready to rewrite the global governance of climate change. States and NGOs representatives alike approached the Paris Conference determined to make COP 21 a turning point in the history of environmental politics, apparently succumbing to the pressure to adopt a comprehensive agreement and refusing to be the one actor to obstruct the deal. In the words of one of the diplomatic officers: “What happens in Paris will be in the history books for a long time. Let’s not give any historian a reason to write that we ruined the global response to climate change” (Personal anonymous notes cited in Dimitrov, 2016).

### *2.3 Common principles but different approaches of the two Treaties*

The result of the Paris summit has formally been defined as the “Paris Outcome” (Nespor, 2016), mirroring the commitment already present on the Durban Platform to finalise a new “agreed outcome” before the end of 2015 to substitute the Kyoto Protocol after the end of its second commitment period in 2020. The choice of the words “agreed legal outcome” in the Durban text (Rajamani, 2012) was the fruit of much discussion on the type of instrument to be approved by the Conference and reflected the resistance of some parties to accept references to legally binding obligations. Nevertheless, the result of COP

21 was a legally binding document made of two parts, one being the COP decision implementing the agreement, the other the Paris Agreement itself (Nespor, 2016).

In line with the provisions of the Framework Convention, the Paris Agreement, like its predecessor, still stipulates that developed countries should take responsibility with regards to the effect of human-generated pollution both in terms of financial and technological support of developing countries. However, the divide between Annex I and non-Annex I countries has been scrapped in terms of commitment to climate change mitigation in favour of a more inclusive and country-specific approach that allows each party to the agreement to set their own Nationally Determined Contributions (NDCs), which have to be communicated on ratification and updated every five years (Rajamani, 2016: 511).

No substantial targets are to be achieved apart from a general goal to keep temperature rises “well below 2°C over the pre-industrial period” (Paris Agreement, 2015), which has eliminated any real policy content and left only a loose framework to implement reductions of anthropogenic GHG emissions. This has led some commentators to conclude that the emphasis posed on adaptation measures rather than mitigation constitutes the proof that the Agreement “fully expects substantive impacts from human-induced climate change and has given up on avoiding all of them” (Spash, 2016).

Nonetheless, the Paris Agreement calls all parties to update and adopt ever more ambitious environmental policies as part of their NDCs, which might serve as an effective mechanism to push governments toward more determined actions, also leaving the possibility for informal cooperation and standard-setting (Sand, 1990).

A clear problem with this approach is that in the absence of a numerical target or threshold to be achieved, countries might be self-serving in the definition of their commitments, purposefully aiming lower than they should in order to escape costly environmental actions (Grubb, 2015). The overall hope of the Agreement is to foster evermore ambitious national green policies that will ratchet up climate action all around the world, exploiting the momentum offered by the engagement of official governmental agencies, NGOs, cities, corporations and other non-governmental networks that are part of the bottom-up approach inaugurated by the Paris Agreement (Hale, 2016; Falkner, 2016).

When comparing the Kyoto Protocol to the Paris Agreement, one cannot help but be struck by how different the two instruments are in terms of approaches to the finality of the UNFCCC and also to its regulating principles, in particular that of common but differentiated responsibilities. Furthermore, where the Kyoto Protocol articulates top-

down commitments also subjected to a complex enforcement mechanism, the Paris Agreement relies on parties' good faith and on "naming and shaming" and peer pressure at the moment of review of the national commitment to keep states in line with its provisions and objectives. The next two sections will analyse these two avenues of differences, highlighting how these two legal instruments could not be more different although they have the same aims and respond to the same necessities.

### *2.3.1 The principle of "common but differentiated responsibilities" and binding commitments*

The principle of "common but differentiated responsibilities" had been inserted in the Framework Convention as a clear acknowledgement of the different roles that countries had played regarding anthropogenic pollution until that moment. It drove a wedge between countries that had reached peak industrial development before the time of awareness of climate change and those that might not, due to the restrictions imposed by environmental protection measures (Harris, 1999). Developed countries who had limitlessly released into the atmosphere the negative externalities of their industrial development were thus considered to have a bigger responsibility vis-à-vis climate change than countries that were still on the cusp of economic development, but also more capable of shouldering the costs of transitioning from a carbon-based economy to a less pollutant one (Ibid.). These considerations, together with questions of equity and social justice, led to the formulation of the principle of "common but differentiated responsibilities", enshrined in the Framework Convention on Climate Change. This principle recognises that countries are all equally responsible in the face of climate change on the basis of the common and global nature of the issue, but it also states that countries did not contribute equally to the levels of pollution we contend with today and that they do not share the same capacities to tackle the problem. The original formulation of this principle in the UNFCCC did not specify how the different responsibilities of developed and developing countries should be taken into account and how this should be translated into effective policy guidelines to actively combat climate change (Nespor, 2016). Rather it proved to be a sound foundation for developing countries to push their own preferences, eschewing binding commitments in light of their own concerns of raising their people out of poverty and advancing their economies (Najam, 2005).

In interpreting the principle and operationalising it, the parties to the Convention at first privileged a rather stern approach, in fact, in the Berlin Mandate they drew a harsh line

between developed and developing countries, stipulating no commitments but voluntary ones for the latter group of countries (Nespor, 2016). This decision, later transposed into the regime inaugurated by the Kyoto Protocol, soon became the source of many problems, affecting the effectiveness of the Kyoto regime and its perceived legitimacy and fairness. As the status of some countries in the developed camp became somewhat anachronistic, considering the sheer quantity of their carbon emission, such as in the cases of China or India, it also became more difficult to uphold the current interpretation of the “common but differentiated responsibilities” principle (Ullal, 2013). Reinterpreting this principle proved to be one of the main hurdles that negotiators had to clear in order to gain the consensus necessary to the approval of a successor to the Kyoto Protocol, especially in the face of the G77’s refusal to accept any top-down binding commitments to emission reduction that could interfere with their growing economies. At the same time, implementing a new instrument that still carried the flaws associated with Kyoto, a sparse country membership that accounted for barely 20% of the world emissions, was considered to be equally unacceptable. The result of these twin but opposite drives was a complete restructuring of the politics of climate change, marked by the scrapping of quantitative reduction targets imposed by an internationally designed instrument and the introduction of a more flexible, cooperative framework for nationally designed environmental policies (Falkner, 2016).

The Paris Agreement rather than differentiate among countries or groups of such, outlined avenues of differentiation in every and each one of its aspects, mitigation, adaptation, transparency, finance, technology and capacity building, creating a much more complex if somewhat looser legal straightjacket than its predecessor (Rajamani, 2016: 509). In the field of mitigation, the Agreement turns to self-differentiation to implement the “common but differentiated responsibilities” principle, allowing countries to determine their own contributions in light of their capacities and national circumstances. In order to regulate self-differentiation, in an effort to limit arbitrary interpretation of national circumstances and respective capacities, the Paris texts creates expectations of the parties that should drive them to adopt increasingly ambitious objectives and mark their transition, in the timeframe deemed appropriate, to long-term low carbon emission strategies for their whole economies (Ibid.). The flexibility of the Paris Agreement poses several risks regarding the effectiveness of the agreement itself, that is why the bottom-up approach of the instrument was also accompanied by several mechanisms of oversight and control that should ensure the implementation of and the compliance to the content of the Agreement.

These mechanisms, in line with the spirit of the Paris Agreement, do not constitute an enforcement body and they do not lead to the imposition of sanctions. They are rooted in the cooperative features of the Paris text, and as such regard transparency, global stock taking and a facilitative committee of experts to oversee the whole process (Rajamani, 2016: 502-505).

### *2.3.2 Enforcing compliance under the two legal instruments*

The complex architecture of the Kyoto Protocol extended also to the mechanisms regulating oversight and compliance to the binding targets of the agreement. The framework that regulated compliance under the Protocol reflected the classical approach of top-down regulations controlled by ad hoc bodies created under the instrument itself. The enforcement of the Kyoto Protocol was split into two processes, one of monitoring and another of non-compliance mechanisms (Finus, 2008). The monitoring part of the enforcement procedure established a continuous exchange of information and relevant data between the parties to the protocol, the secretariat and an expert team in charge of all scientific and methodological reviews. This process hinged on the creation by parties of a national emission inventory and registry for the market based mechanisms, the submission by countries of said instruments to the secretariat, a review by the expert team, the creation of an independent transaction log by the secretariat and the drafting of final national reports by both parties and the secretariat. The exchange of information is then at the basis of the determination of whether a country is in compliance or not with its targets and in cases of suspicion of non-compliance, the matter is readdressed to the Compliance Committee. The Compliance Committee itself is then divided into two branches, which take up complaints by either parties or the secretariat depending on the situation, one is the Facilitative Branch the other is the Enforcement Branch. The Facilitative Branch is called upon when parties are in danger of not complying with their targets and they offer an early-warning system together with relevant advice and assistance. On the other hand, the Enforcement Branch has the duty to ensure compliance with regards to emission targets, reporting and eligibility requirements to accession to the market based tools under the protocol. When a party is found to be non-compliant with its targets the following measures are implemented: the party is called to achieve its target by the second commitment period along with an additional 30%, market based privileges are suspended and the party must submit a compliance action plan that outlines its intended actions to reach its targets.

At odds with its flexibility and bottom-up approach in terms of targets and commitments, the Paris Agreement does have some measures of oversight and control with respect to its parties, although it does not mirror, or at least not yet, the careful enforcement structure of the Kyoto Protocol.

The oversight mechanism of the Paris Agreement is articulated into three main areas, transparency, global stocktake and compliance (Rajamani, 2016). Transparency has been considered the key element on which the rest of the architecture is founded (Falkner, 2016: 1121). All parties are required to submit once every two years detailed reports on their emission reductions, tracking their progress in achieving their mitigation targets and in the scope of adaptation (Rajamani, 2016: 503). Furthermore, developed countries are required to submit information about the financial and technological assistance they provide for developing countries, which in turn are encouraged but not forced to do the same. Once parties have submitted their contributions, they will undergo an expert review before the parties themselves participate to multilateral meetings evaluating progress and achievements under the agreement. How this system will work in practice has not been yet decided and any implementation measure fleshing out the guidelines laid down in the Paris text will have to be approved by 2018 (Ibid: 504). The same uncertainty applies to the global stocktake. According to the Paris text, it will be held every five years, in these circumstances parties will be called to meet and assess global progress toward the long term goals of the Agreement and the Convention, before updating their nationally determined contributions. This is the basis of the process of “pledge and review” on which the Paris Agreement is founded and on which rest all hopes of achieving ambitious targets and objectives as a result of a mix of peer pressure and the strategy of “naming and shaming” (Falkner, 2016). As for the assessment of full compliance with the agreement, it is to be carried out by an expert committee that should act in a “transparent, non-adversarial and non-punitive manner” (Rajamani, 2015: 505), whose details are yet to be defined and will probably be subject to long and careful negotiations.

The ultimate hope on which rests the success of the Paris Agreement is the transformation of its framework in a true political force, driven forward by environmentally ambitious actors, such as the EU, but also involving more generally reluctant parties, like Japan or the U.S. (Oberghassel et al, 2016). This way, the political momentum gathered in Paris will only be strengthened by successive summits, leading up to that “ratchet” effect that negotiators envisioned as the main driving force of future environmental governance, renewing its multilateral character and multi-level interactions.

## CHAPTER III

### **Participation and influence of non-governmental actors during COP21**

#### *3. Patterns of NGO participation to COP 21*

The positive outcome of the COP 21 conference in Paris, which regaled the world with a new regime to combat climate change, after decades of successive and fruitless rounds of negotiations, has been attributed to the unprecedented extent and scope of non-governmental actors' involvement (Hale, 2016; Falkner, 2016; Jacobs, 2016). In contrast, other analyses (Dimitrov, 2016) point out how, while parties seemed determined to reach a working agreement, the influence non-state actors had on such a process was relatively limited. The defining moments in the negotiation of the Paris Outcome were restricted to negotiating sessions open only to parties at first, and later in informal, bilateral or multilateral ministerial meetings that reflected very much a secret, state-based form of diplomacy rather than the transparent, open process conducive to non-governmental actors' active participation (SustainUS and YOUNGO, 2015).

Although NGOs had little space to intervene in the official talks, with the exception of opening and closing statements to the ADP process and closing remarks to the final meeting of the parties that saw the Paris Agreement formally approved, they did have other opportunities to make their voices heard, just as they did in previous COPs (Betsill, 2009:7). As stated elsewhere in this work, the main contribution of NGO to such international summit relates to the provision of technical information and expertise to inform other relevant stakeholders' actions. In the events of COP 21, NGOs did offer insight on the science of climate change, circulated information and updates on the state of negotiations through briefings, press conferences and the newsletter ECO, edited by the global environmental umbrella organisation, Climate Action Network (CAN), and lobbied for their preferred text options through informal networking or by means of outside lobbying and protest actions.

More than 1000 organisations participated to the Paris summit as registered non-governmental observers, bringing to the for a of negotiations more than 6000 activists, researchers, local governments delegates and businessmen (UNFCCC List of participants, 2015), organised in loose coalitions called constituencies representative of their respective core values or interests. The constituencies now amount to eight, representing industries and business (BINGO), local governments and municipal authorities (LGMA), environmental organisations (ENGO), indigenous people (IPO),

research and independent organisations (RINGO), trade unions and labour organisations (TUNGO), women and gender organisations (Women and Gender) and youth organisations (YOUNGO). The constituency structure is only formally respected when observer organisations take the floor in the official summit sessions. As far as cooperation and informational exchanges are concerned, any NGO is free to direct its actions as it deems fit, often allying itself to other groups based on loose interests, concerns and values rather than the actual constituency to which they belong. This changeable, interconnected structure of relationships and cooperation tying together the non-governmental actors participating to COP meetings, led scholars to analyse their behaviour as transnational advocacy networks, rather than as single organisations with their own hierarchical structure (Keck and Sikkink, 1998). The network approach stresses how non-governmental organisations involved in advocacy actions across a variety of issues and subjects (human rights, environmental protection, women rights, indigenous people rights) are based on “fluid and open relations among committed and knowledgeable actors working in specialized issue areas” (Keck and Sikkink, 1998: 16). The variety of actors involved in such networks is not limited to non-governmental organisations, but extends to include also foundations, churches, the media or representatives of branches of executive or legislative bodies of government (Ibid.). The relationship among actors in the same network is based on the provision of information, funds and services that connect these organisations in a loose web of both formal and informal exchanges. Similarly to what scholars have found in relation to domestic social movements (Della Porta and Diani, 2006: 121-131), movement and relations between different networks revolves around exchanges and flows of individual activists, funding and organisational models for campaigning, that are introduced by one group at one moment but then are adopted by other groups at a later time. The core that binds different actors to the same network is firmly rooted in their shared values and framing for campaigning, which actors use to absorb and sort information in different categories to be reused in their effort to lobby and advocate for a specific policy outcome (Keck and Sikkink, 1998: 17). The strategies these actors resort to in order to achieve their objectives belong to the realm of socialisation and persuasion processes, through which they attempt to reshape the value systems and informational landscapes in which states take decisions. Their tactics include, in the words of Keck and Sikkink (1998: 24):

(1) *information politics*, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most

impact; (2) *symbolic politics*, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away; (3) *leverage politics*, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and (4) *accountability politics*, or the effort to hold powerful actors to their previously stated policies or principles (italics in the original).

In addition to these, networks may rely on the “monitoring” strategy (Ibid.) in order to use information to hold actors accountable to public statements, pre-existing legislation either national or international. In the context of the Paris COP21, non-governmental actors used many of these strategies to try to get their points across to states with respect to a wide scope of issues, be it the long-term goals of the agreement or the substantive provisions regarding finance and technological transfers. The next sections will analyse the strategies or combination of strategies used by the most prominent non-governmental actors based in the United States in relation to some of the most conflictual aspects of the Paris Agreement, highlighting how and to what extent the action of non-governmental organisations helped shape these debates and their respective outcomes.

### *3.1 The role of U.S. based NGOs*

More than one hundred non-governmental organisations participating to the Paris COP meeting were based in the United States, representing all constituencies from business and industry organisation to women and gender organisations. These actors carried out their strategies often in concert, reaching out to like-minded organisations even across constituency lines, presenting their policy preferences to the public in press conferences and to the parties in both formal and informal discussion fora of the conference. Environmental NGOs (ENGOS) were largely represented by either the U.S. branch of the Climate action network, which brought together more than one hundred and sixty similarly oriented organisations (CAN U.S., 2015a), or by 350.org, another far-reaching network of environmental activists. Similarly, the Youth constituency was often represented either by the American organisation SustainUS or by the youth section of the Sierra Club, a long established ENGO that had been part of the climate negotiations almost since their establishment (Giorgetti, 1999: 14-15). Other constituencies cooperated in a wider variety of formations, reaching out not only across their own borders but also across the North-South divide, as for instance the Women and Gender

constituency, represented by the Women's Environment and Development Organisation (WEDO).

### *3.1.1 Information strategies*

The most common strategy among those outlined above, across all actors and across all issue areas, was the information politics strategy. To be successful, such a tactic needs to strike a delicate balance between the accuracy and technical relevance of the information conveyed and the emotional power of the imagery or testimony that is used to convey the message (Keck and Sikkink, 1998). Given that the resources most readily employed by NGOs to lobby other powerful actors is information, it stands to reason that such a commodity needs to be accurate and to the point, in order to conserve the non-governmental organisations' standing as reliable and expert sources. Nevertheless, their messages must also be framed in such a way as to invoke immediate action. To provide a solid base for activism, issues must be presented not as technical matters to be handled by experts but rather as problems that pervade daily life and that closely concern citizens. A case in point was the use of testimony by an activist member of the National Association for the Advancement of Colored People, in a press briefing under the aegis of CAN U.S. on the third day of the Conference (CAN U.S., 2015b).

The theme of loss and damages was one of the most contentious topics of the conference and had been framed by many states simply as a question of liability and compensation for damage caused by extreme events linked back to climate change (United States of America, 2015a). The reference to legal liability and compensation constituted a red line for most developed countries and as such led their negotiation teams to oppose the inclusion of a specific provision on loss and damage in the agreement (ECO, 2015d). NGOs active on the issue strove to reframe this issue as a more comprehensive policy area, calling for a full understanding of how climate change impacts on people's daily lives by forcing them to give up cultural heritages, traditional sources of livelihood and their homes due to sea-level rise, extreme weather events and other natural disasters (CAN U.S., 2015b). Additionally, NGO activists tried to reshape loss and damages not only as an interest of the most vulnerable developing countries, such as the Small Island States, but also as a need for solidarity, capacity building for policy design and simple managerial competence in the face of such challenges that developed countries have as well. The testimony of an activist of the National Association for the Advancement of Colored People, who had lost her home as the Hurricane Katrina struck New Orleans,

served to drive this point home. She stressed how the compound inequalities of race, ethnicity and poverty expose people to the most disastrous effects of climate change, affecting disproportionately the most vulnerable, and how little of their losses could be quantified in monetary terms so as to serve as a basis for compensation. To underline how losses are emotional and personal, she recounted the disappearance of all her family's imagery, which is now forever lost not only to her but also to all future generations of her children (Ibid.)

### *3.1.2 Leverage strategies*

In addition to information politics, NGO usually also engage in leverage politics in an effort to claim the material or higher ground with respect to actors they want to influence and force them to comply with their preferred policy outcomes. Business and industry organisations (BINGOs) generally have a greater chance of mobilising powerful material assets as leverage for policy concessions than other types of value-based NGOs, although often the latter types have managed to involve, through campaigning and lobbying, allies that support them in terms of material resources. One example in the COP21 negotiations is the cooperation of the ENGO 350.org together with the Head of the Senate of the state of California, the Sustainable Market Foundation and the Rockefeller Brothers Fund, where the latter two are the financial backbone of many American grassroots initiatives. They strongly advocated divestment from the fossil fuel industries, presenting the transition to a clean economy as not only a socially and environmentally desirable outcome, but also as a profitable economic strategy, painting the fossil fuel industry as a sinking ship that should be wisely abandoned before it is too late (Sustainable Markets Foundation – 350.org, 2015a).

Conversely, when non-governmental organisations based on values and shared identities, such as ENGOs, youth organisations, gender and human rights organisations, have little material leverage to bring states to heel and few allies to support them, they recur to moral leverage, the “mobilisation of shame” (Keck and Sikkink, 1998: 31). In order to wrestle concessions from states, they endanger their international reputation and credibility. During the COP 21 negotiations, when already most of the substantial debated had come to an end and it became increasingly clear that the provisions protecting human rights and indigenous people rights, the commitment to a just transition to a green economy that would not make workers collateral damage, and to gender equality would be scrapped from the operative text, contrary to the wishes of most NGOs, the Sierra Club announced

the first Unjust Transition Award (Sierra Club, 2015). Similarly to the “Fossil of the Day Award” (ECO, 2015a; ECO, 2015c), which CAN used to shame states that were apparently dragging their feet in the negotiations or opposing crucial aspects of the agreement, the Unjust Transition Award was created to bring the public attention on the importance of the inclusion of workers’ right to a just transition to a clean economy in the text of the agreement. Many NGOs (WEDO, 2015; Sierra Club, 2015) had stressed how any transition to a decarbonised economy could not be achieved at the expense of people’s rights, but it must be carried in a way that does not destroy jobs and disempower the unions, it needs to respect the basic rights of workers and weaker social strata of the population. Nevertheless, the right of people to a “just transition” was eliminated from article 2 of the operative text soon after the end of the ADP sessions and the protests of all NGO constituencies were ignored. In response, the Sierra Club created the Award and bestowed it upon Nissan, partially owned by the French government and one of the sponsor of the COP, who, although it had invested in clean vehicles, was resisting domestic and international pressures to let some of its North American workers unionise. The offenses attributed to Nissan went as far as effectively deterring its workers from reaching out to and joining Trade Unions and holding anti-Union meetings and training sessions (Sierra Club, 2015). Activists hoped that by uncovering such behaviours they would either “shame” Nissan in reviewing its union policy or attract the attention of other powerful actors, i.e. states, that could intervene effectively.

### *3.1.3 Accountability strategies*

Shaming strategies are not only limited to leverage politics but also account for a large part of accountability and monitoring politics (Keck and Sikkink, 1998: 31-32). In their quest to hold governments and states accountable to their commitments, NGO do not only refer to existing legislation or international standards but they also seek to learn of actors’ stances on issues so to hold them accountable to their publicly made claims regarding their positions (Ibid.). A clear example of this strategy was the insistence of the U.S. Climate Action Network on calling out to the U.S. Special Envoy for Climate Change, Todd Stern, to be consistent with his country’s position with regards to the loss and damage mechanism. In a press briefing, Stern declared that the U.S. was largely supportive of a mechanism approved in previous COPs, the Warsaw mechanism, whose three pillars, education, cooperative dialogue and financial support, were elaborated to address loss and damage in a cooperative and multilateral approach. He also

acknowledged the importance of loss and damage, technical and financial support and risk insurance for the most vulnerable countries whose very existence is threatened by climate change (United States of America, 2015b). Few hours later, in a similar press conference, CAN U.S. urged the United States to stop opposing the bridging proposal brought to the floor in the ADP negotiations as it reflected very closely the country's self-professed position and it would be a considerable step forward from the previous states of affairs. Until that moment, in fact, the choice had been either no text on loss and damage or a single proposal brought forward by a coalition of developing countries parties (CAN U.S., 2015c).

Although, NGOs have a variety of strategies or combination of strategies to put into practice to achieve their objectives, it remains to be seen how effective they really were to the purpose of the Paris Outcome. The next sections will analyse the influence NGO diplomacy had on some of the most divisive debates that took place during the negotiations. The focus will be on how non-governmental organisations framed the issue, which efforts they made to put it or keep it on the negotiators' agenda, how successful they were in swaying states' positions, and whether or to what extent the text mirrors their preferences. Finally, special attention will be put on how the final text leaves the field open for non-governmental intervention in the implementation of the treaty itself.

### *3.2 The ambition package: long-term goals, global stock take and Nationally Determined Contributions*

Ambition, in the context of the Paris Agreement, refers to the overarching international political structure that is to drive climate governance once the Agreement formally enters into force. The facets of this structure represented its long-term goals of temperature reduction and transition to a clean economy, the repetitive pledge and review system at the basis of the accord and the timeframe to drive this process onward and towards ever-more up-scaled national contributions.

This issue, so central to the shape that the Paris Agreement would have at the end of the negotiations, was understandably at the very heart of the COP agenda. Given its importance, NGOs made no secret of their preferences regarding the ambition of the agreement, advocating for a 1.5°C temperature rise from pre-industrial levels long-term objective, full decarbonisation of the economy by 2050, 5-year cycles of reviewing and updating Nationally Determined Contributions (NDCs) and for the initial NDCs proposals to be up-scaled before their implementation (ECO, 2015d).

Different framings were used by different categories of NGOs. Value-based actors, such as ENGOs, IPOs and YOUNGOs, equalled ambition with safety and survival for the most vulnerable countries and populations, in an effort to avoid disastrous consequences for present and future generations (CAN, 2015). The knowledge and research based NGOs (RINGOs) were instrumental in corroborating these viewpoints by mobilising scientific facts and projections in its support. One particular example of such deployment of technical expertise was the “Fair shares: a civil society equity review of INDCS” report, presented by a number of major NGOs present at the Paris summit. This report painted a grim picture of the current climate efforts, deeming insufficient for keeping temperature rises beneath 3°C, let alone 1.5°C, the long-term goal auspicated by NGOs and a great number of developing countries. Furthermore, it showed how, taking into account historical responsibilities and respective capabilities of counties, very few states had submitted intended NDCs reflecting their domestic circumstances and their “fair share” of emission reductions. A few poignant examples are the NDCs submitted by Russia, Japan and the United States, whose contributions all amount to less than a fifth of their fair share (Civil Society Review, 2015).

For BINGOs, the ambition and clarity of the track represented by the Paris Outcome was instead perceived as a necessary signal from policy makers to testify their commitment to combating climate change. Their unequivocal commitment in turn would allow industries and businesses to confidently invest in greener and cleaner projects without the fear of a political backlash farther down the road (We Mean Business Coalition, 2015).

The view of ambition as a necessary condition for mobilising private finance and as a starting signal for greater support for environmental protection in the business community was often reiterated by representatives of the United States, among which several Senators and the Secretary of State, John Kerry (U.S.A., 2015c; UNFCCC, 2015b).

During the whole of the negotiations, the U.S. was one of the few, if not the only county, to hold regular press conferences during the negotiations. As such, it is possible, jointly with the updates offered by NGOs and the ECO newsletter, to trace the evolution of the US stance on some of the most pressing issues of the Conference. On the issue of ambition, the U.S started off supporting the 2°C temperature goal, as had already been agreed in previous summits. Slowly, as negotiations progressed, the American negotiations team opened up to the possibility of some sort of language in the text that would mention the more ambitious goal of keeping temperature rise at 1.5°C above pre-industrial levels. Finally, during the ministerial segment of the negotiations, the U.S.

joined the High Ambition Coalition, a group of like-minded states, although not a formal negotiating coalition, that advocated for a long-term goal of 1.5°C temperature rise, short cycles for the global review of NDCs and the year 2020 as the starting point of the global stocktake rather than 2030 (U.S.A, 2015b; U.S.A, 2015c; Marshall Islands, 2015).

The reports on the facilitative ministerial meetings that streamlined the last week of the COP21 also give support to the increasing consensus with regards to the long-term ambition goal and the stocktake and update process to achieve it. Countries gradually began to accept the desirability of the 1.5°C threshold and the need for swift cycles of review for their Nationally Determined Contributions starting as soon as possible.

The final text reflected these shifting national considerations, although the need for an overarching consensus drove the provisions of the Paris Agreement away from the outcome preferred by several NGO constituencies (UNFCCC, 2015b). Most ENGOs and other groups concerned with climate and social justice, for instance those belonging to the Women and Gender Constituency, pointed out how the Nationally Determined Contributions on the table were insufficient to achieve the overall aims of the treaty and how the ambition gap needed to be overcome at the risk of rendering the whole agreement effectively inefficient. On this account, the role of NGOs as proponents of grassroots domestic initiatives is of paramount importance. In the face of states' apparent unwillingness to go beyond their already proposed NDCs, which have been decreed not ambitious enough to make a difference in the long-term goal of the agreement, NGOs have renewed their commitment to activism, in order to reshape in first person the direction of their states' domestic policies (Ibid; Sustainable Markets Initiative-350.org, 2015b). The new emphasis value-based NGOs put on domestic activism was also accompanied by the use of a stronger and less conciliatory language with which NGOs announced a global campaign of civil disobedience to protest against the creation of new projects for fossil fuel infrastructures sanctioned by states all over the world. In this instance, activists portrayed extraction sites as veritable "crime scenes" where "criminal action" is carried out while state authorities turn a blind eye (Sustainable Markets Initiative-350.org, 2015b). While ENGOs and other climate justice NGOs rallied together to renew their commitment to a more ambitious and effective outlook on environmental policies, BINGOs and representatives of the RINGO constituency welcomed the final outcome of the Paris Conference as a successful attempt at multilateral diplomacy and climate governance. BINGOs in particular applauded their newfound avenues for involvement in the technical, financial and technological aspects of the agreement, hailing

the end of a divisive and confrontational approach to climate politics and the beginning of a new cooperative rhetoric (UNFCCC, 2015b).

### *3.3 The inclusion of human rights in the text*

While the question of ambition was crucial to determine the ultimate shape the Paris Agreement would have, the inclusion of an extensive reference in the operative text of the treaty, another issue at the core of non-governmental organisations' lobbying actions, did not enjoy the same attention on the part of decision-makers. Several NGO constituencies, ENGOs, Women and Gender, IPOs, YOUNGOs and TUNGOs, were extremely focused on reframing climate change as an issue that builds on other inequalities, of wealth, power, on the basis of ethnicity, gender and age, affecting disproportionately the most vulnerable (WEDO, 2015). Their emphasis on human rights understood as broadly and inclusively as possible, comprising of the rights of indigenous people, children, migrants, local communities, women, worker's rights to a just transition and intergenerational equity, stemmed from two main considerations. On the one hand, the recognition that environmental degradation negatively influences people's basic rights, for instance their right to health, to work and to food security. On the other, it elaborated on the belief that actions taken against the negative impacts of climate change needed to be mindful of people's rights and that environmental policies could not come at the expense of those populations they were meant to save. Such joined efforts for the inclusion of what NGOs termed the "people centred paragraph" (Ibid.), initially conceived as a part of article 2 of the treaty in which the long-term purposes of the agreement were laid out, scarcely had the effect envisioned by their proponents. The human rights narrative was largely ignored not only by states but also by other NGO constituencies such as BINGOs or RINGOs, and came under attack as soon as the text of the agreement left the ADP sessions and moved on to the ministerial meetings to which NGO had no access (SustainUS and YOUNGO, 2015).

In the press conferences held by various NGO constituencies, the inclusion of human rights in article two was one of main points that were reiterated again and again, together with ambition and the importance of an independent and comprehensive proviso on loss and damage, but no amount of lobbying seemed to sway states' resistance.

The position of the United States appeared particularly ambiguous. Like many other developed countries, the U.S. refrained from openly supporting the anchoring of human rights in the Paris text in official negotiations (ECO, 2015b), going so far as to oppose

their inclusion in the operative articles on the grounds that they had little to do with the crucial purpose of the agreement (ECO, 2015c). While this was the position by which the U.S. stood in the official negotiations, in public, the Special Envoy for Climate Change, Todd Stern, expressed his support for a strong human right reference (U.S.A, 2015b), only to be urged by representatives of CAN U.S. to stop opposing the inclusion of such a language in article 2 of the treaty (CAN U.S., 2015c).

There is no formal explanation for the opposition of the U.S. to the inclusion of human right in the new agreement on climate change, except their vague protest that it does not directly concern the purpose of the agreement (ECO, 2015c). One can only imagine that, as with their insistence on avoiding any referral to liability and compensation language in the area of loss and damage, the U.S. would also oppose any provision that could provide any ground for individuals or organisations to take up legal arms against the state. The final text of the Paris outcome did refer to human rights in the same vein proposed by the value-based NGO constituencies, but despite their lobbying efforts, such language was part of the preamble of the agreement rather than the operative text. NGOs collectively complained that such a lack would provide scarce protection for all vulnerable categories that would face not only the dangers of climate change but also the negative side of the future transition to a decarbonised economy and claimed the “surgical removal” of human rights language from article 2 one of the greatest failures of the COP21 (UNFCCC, 2015b). Nevertheless, the inclusion of human rights in the Preamble of the Paris Agreement was the first formal acknowledgement of the interconnectedness between climate change, human rights and more generally social justice issues (Atapattu, 2016) and as such represents a partial step forward from the previous state of affairs.

As was the case with ambition, non-governmental organisations continue to have a fundamental role in the implementation aspects of the agreement that go beyond the provisions enshrined in the text. As activism and innovative initiatives at the grassroots level might prove to be the driving force behind the ratchet mechanism at the base of the agreement, advocacy and human rights activism might prove to be what translates the Preamble of the Paris Outcome into reality. Non-governmental organisations are very aware that, while climate negotiations of the same scale as COP21 are not common happenstance, their campaigning efforts and continuous activism go beyond the reach of such international summits and extend to all times and all places. Therefore, while an international regime might not be able to deliver on the change of direction NGOs

auspicated, their far-reaching grassroots advocacy in time might fulfil their hopes and expectations by fostering a deeper, lasting transformation of society and the economy.

### *3.4 Overall assessment of NGO influence*

In both these instances, in the debate for greater ambition and the inclusion of human rights in the text of the treaty, NGOs made use of a variety of strategies among those laid out above but they managed to achieve very different results. On the one hand, in the discussion surrounding ambition and the long-term goals of the treaty, NGOs were able to restructure the issue in various ways earning states' support. ENGOs and other value-based constituencies espoused the view, shared by most developing countries, that ambition would be the only guarantee of the effectiveness of the agreement and thus of the continued existence of communities, habitats and regions threatened by climate change. Business and industry organisations instead focused the attention on the impact that ambition, clarity and transparency would have on the economic sector, easing the path to a greener economy and giving investors the necessary security and incentives to cooperate to render the agreement effective through increased finance and technological transfers among countries. The latter interpretation was key in strengthening the win-win rhetoric that reframed climate action as an economically beneficial policy plan and silenced any argument to the contrary, while also bringing historically reluctant countries on board with commitments to emission reductions and decarbonisation of the economy. Once NGOs succeeded in framing the issue to serve their purposes and were able to somewhat sway states to adopt their narratives, it remains to be seen how the agreement itself accommodates their preferences and accounts for their continued participation in the substantive aspects of climate politics. As far as the ambition package is concerned it does accommodate NGO preferences with regards to the review cycles, but both the long term-goals and the start of the global stocktake are farther away from NGO positions, as a result of bargaining in the ministerial sessions. As for the acknowledgement of the role of non-governmental organisations in the substantive implementation of the agreement alongside parties, in the decision accompanying the Paris Agreement as part of the Paris Outcomes, in its fifth section, the Conference of the parties “*welcomes* the efforts of all non-Party stakeholders to address and respond to climate change, [...] *invites* the non-Party stakeholders [...] above to scale up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate

Action platform” (emphasis in the original text). This leads to the conclusion that, in the context of ambition, NGOs were highly influential, being able to intervene in the framing of issues, their presence on the COP agenda, the position of key actors and ultimately in the procedural aspects of the treaty. For what concerns the substantial aspects of the agreement, the insistence of parties on a temperature limit of “well below 2°C” and the lack of any direct mention of decarbonisation of the economy points to a different conclusion, given the partial accommodation of NGOs’ preferences.

When analysing the debate regarding the inclusion of human rights in the operative text of the treaty, one comes to face with a completely different state of affairs. While NGOs strove to reframe climate change in terms of human rights, their advocacy pleas brought them only so far. While the text of the treaty reflected their emphasis on a number of matters such as a just transition for workers, gender balance, women empowerment, protection of indigenous people’s rights, of the right to health and implementation of the principle of intergenerational equity, it did so in the Preamble of the Agreement rather than in article 2 of the operative text as NGOs had hoped. Value-based NGOs, who were the main advocates of human rights at COP21, were unable to sway key actors in defending their positions. Furthermore, they were also unable to keep the question on the agenda as soon as the ministerial section of the negotiations entered into its final stages. Finally, while the Paris Outcome recognises non-party stakeholders the right and also the ability to contribute to the achievement of the long term objectives of the agreement, it does not make any mention of their standing with regards to the protection of human rights bot vis-à-vis the dangers of climate degradation and the possible negative sided to environmental protection policies. In conclusion, for what concerns the standing of human rights in the Paris Agreement, NGOs can be said to have had a relatively low influence, being able to achieve only very little of what they had expected to accomplish at the beginning of the conference.

## CONCLUSIONS

Since the first international conference on the environment, non-governmental organisations have been active in this sphere to promote either the protection of concentrated interests, such as business lobbies, or to advocate for public interest concerns such as transparency, the protection of human rights or the respect of equity. In the past as much as in the present, the presence of NGOs in international fora has been associated with the provision of relevant and accurate information and technical expertise, as these organisations have taken up an advisory capacity in matters that require a sound understanding of relevant data. Although this is the case, the privileged position NGOs enjoy as observer organisations in many international spheres under the aegis of the UN has not always allowed them to wield considerable influence. This lack is often caused by the fact that many NGOs, especially value-based organisations, have as their main source of power the strategic deployment of information rather than material resources, making their influence conditional to the receptiveness of other actors. In the example of the 21<sup>st</sup> Conference of the Parties to the UNFCCC, held in Paris, the effectiveness of NGOs' strategies varied depending not only on the single issue they sought to influence, but also on how united a front they presented in advocating for similar policy content. It seems that the actual outcome of the conference reflected NGOs preferences only where the whole of the stakeholders pushed for the same policy content, as was the case with ambition, where all constituencies called for greater commitments, joined also by most vulnerable state parties and lastly by other actors such as the EU or the US. That was in all probability one of the few substantial concessions NGOs wrestled from states during the conference. Furthermore, the gradual changes that one can perceive in the position of other countries, the U.S. for instance, might be very well the result of the action of other states rather than the leverage employed by both business NGOs and value-based ones. Even allowing for a greater share of NGO influence, it remains to be seen whether it was the business and industry actors who singlehandedly changed the negotiations' course. This would lead to a very different assessment of the influence at value-based NGOs' disposal. It is no surprise that business interests have an easier time mobilising (Hanegraaff, 2015) and that once they do it is fairly easy for them to frame their demands in such a way that states believe it is in their best interest to comply (Keck and Sikkink, 1998). On the other hand, value-based NGOs need a considerable amount of effort to rewrite issues dear to them as something it is in the best interest of states to address.

It remains true that international bargaining and treaty making remains very much the province of states, and that NGO lobbying remains most effective in the context of domestic politics. Nevertheless, this does not mean their influence was null or only very moderate. In light of the importance that domestic politics and domestic policies will have in the implementation of the Paris Outcome, non-governmental actors will be crucial to the future of environmental politics, allowing us to scale the assessment of their influence to a significant level. The importance of the domestic dimension in the context of environmental politics remains patent now more than ever. Taking into account the example of the United States of America, one can easily see how changes in the domestic environment might demolish all progress achieved at the international level. Under the Obama presidency, climate change held a prominent position in the country's international political agenda, leading not only to its successful accession to the Paris Agreement but also to the U.S. President acknowledging the urgency of the climate crisis and the responsibility the country must bear as one of the greatest present and historical polluters (UNFCCC, 2015a). Conversely, after the latest presidential elections, the U.S. position in matters of climate change became much more sceptical and promised to become a real hurdle in the implementation of the Paris Agreement (The Guardian, 2016). President Trump went from declaring his intention to exit the Agreement as soon as possible (Ibid) to affirming he has not yet taken a firm decision on the subject, which has rendered all multilateral meeting on the subject difficult and inconclusive (Pengelly, 2017). Finally, he declared his intention to exit the agreement (Valsania, 2017). Vis-à-vis the directives coming from the federal government, it remains in the powers of local authorities, businesses and other non-governmental actors, such as the no-profit sector, to take the initiative (Ibid.) and haul their country on the path to achieve the goals laid out in the Paris Agreement. As the case of the U.S. can prove, even in the most hostile political environments, the action of non-governmental organisations remains fundamental to the future of environmental politics. On the one hand, businesses and industry can command an extraordinary variety of material assets, which can be used to push and prod political institutions to keep up with technological progress and steer nations toward the desirable goal of sustainability and carbon neutrality. On the other, value-based organisations, can overcome their lack of material resources by relying on committed activism, which can serve as a force reshaping the bedrock of the economy and initiate the process of lasting societal change. Ultimately, given the interconnectedness of the national with the international, especially in the field on

environmental politics, it seems appropriate to conclude that non-governmental actors are and will still be in all likelihood an increasingly important piece in the international governance puzzle, if not by engaging in direct confrontation with states then by changing them from within.

## BIBLIOGRAPHY

- ATAPATTU, S. (2016). Climate Change, Human Rights, and COP 21: One Step Forward and Two Steps Back or Vice Versa?. *Georgetown Journal of International Affairs*, 17(2), 47-55.
- BETSILL, M. (2002). Environmental NGOs meet the sovereign state: The Kyoto protocol negotiations on global climate change. *Colorado Journal of International Environmental Law and Policy*, 13, 49.
- BETSILL, M. M., & CORELL, E. eds (2008). *NGO diplomacy: the influence of nongovernmental organizations in international environmental negotiations*. Cambridge, MA: Mit Press.
- BODANSKY, D. (2010). The Copenhagen climate change conference: a postmortem. *American Journal of International Law*, 104(2), 230-240.
- BÖHMELT, T. (2013). Civil society lobbying and countries' climate change policies: a matching approach. *Climate policy*, 13(6), 698-717.
- BREIDENICH, C., MAGRAW, D., ROWLEY, A., & RUBIN, J. W. (1998). The Kyoto protocol to the United Nations framework convention on climate change. *The American Journal of International Law*, 92(2), 315-331.
- CAN. (2015). *Climate Action Network: Latest Developments at COP21*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-11-30-11-00-can-international> [Accessed on 31 May 2017]
- CAN U.S. (2015a). *Press Briefing U.S. Climate Action Network*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-11-30-14-30-us-can> [Accessed 31 May 2017].
- CAN U.S. (2015b). *Press Briefing U.S. Climate Action Network*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-02-14-30-u-s-climate-action-network> [Accessed 31 May 2017].
- CAN U.S. (2015c). *Press Briefing U.S. Climate Action Network*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-04-14-30-u-s-climate-action-network> [Accessed on 31 May 2017].
- CHARNOVITZ, S. (1996). Two centuries of participation: NGOs and international governance. *Michigan Journal of International Law*, 18, 183.
- CHRISTOFF, P. (2008). The Bali roadmap: climate change, COP 13 and beyond. *Environmental Politics*, 17(3), 466-472.
- CIVIL SOCIETY REVIEW. REPORT. (2015). *Fair shares: a civil society Equity review of INDCs*. [online]. Available at: <http://civilsocietyreview.org/> [Accessed on 31 May 2017].

- CORELL, E., & BETSILL, M. M. (2001). A comparative look at NGO influence in international environmental negotiations: Desertification and climate change. *Global environmental politics*, 1(4), 86-107.
- DELLA PORTA, D., & DIANI, M. (2009). *Social movements: An introduction*. John Wiley & Sons.
- DIMITROV, R. S. (2016). The Paris agreement on climate change: Behind closed doors. *Global Environmental Politics*.
- ECO. (2015a). *Carte Blanche Issue*. Published on 4 December 2015. [online]. Available at: [http://www.climatenetwork.org/eco-newsletters?field\\_event\\_nid=5377&page=1](http://www.climatenetwork.org/eco-newsletters?field_event_nid=5377&page=1) [Accessed on 31 May 2017]
- ECO. (2015b). *Cycling Issue*. Published on 3 December 2015. [online]. Available at: [http://www.climatenetwork.org/eco-newsletters?field\\_event\\_nid=5377&page=1](http://www.climatenetwork.org/eco-newsletters?field_event_nid=5377&page=1) [Accessed on 31 May 2017]
- ECO. (2015c). *Gauche Issue*. Published on 5 December 2015. [online]. Available at: [http://www.climatenetwork.org/eco-newsletters?field\\_event\\_nid=5377&page=1](http://www.climatenetwork.org/eco-newsletters?field_event_nid=5377&page=1) [Accessed on 31 May 2017].
- ECO. (2015d). *On y va Issue*. Published on 30 November 2015. [online]. Available at: [http://www.climatenetwork.org/eco-newsletters?field\\_event\\_nid=5377&page=1](http://www.climatenetwork.org/eco-newsletters?field_event_nid=5377&page=1) [Accessed on 31 May 2017]
- FALKNER, R. (2016). The Paris Agreement and the new logic of international climate politics. *International Affairs*, 92(5), 1107-1125.
- FINUS, M. (2008). The enforcement mechanisms of the Kyoto protocol: flawed or promising concepts?. *Letters in Spatial and Resource Sciences*, 1(1), 13-25.
- FUHR, L., & SCHALATEK, L. (2012). The “Doha Climate Gateway”: Will the camel go through the eye of the needle?. *Heinrich Böll Foundation*.
- FUJIMORI, S., SU, X., LIU, J. Y., HASEGAWA, T., TAKAHASHI, K., MASUI, T., & TAKIMI, M. (2016). Implication of Paris Agreement in the context of long-term climate mitigation goals. *SpringerPlus*, 5(1), 1620.
- GENEST, A. (2012). The fight against Global Warming: Progress Made and Priorities for a Successor to the Kyoto Protocol. *RJT ns*, 46, 525-579.
- GIORGETTI, C. (1999). From Rio to Kyoto: A study of the involvement of non-governmental organizations in the negotiations on climate change. *NYU Environmental Law Journal*, 7, 201.
- GRUBB, M. (2015). From Lima to Paris, Part 1: The Lima Hangover. *Climate Policy*, 15(3), 299-301.
- GUPTA, J. (2010). A history of international climate change policy. *Wiley Interdisciplinary Reviews: Climate Change*, 1(5), 636-653.

- HALE, T. (2016). "All Hands on Deck": The Paris Agreement and Nonstate Climate Action. *Global Environmental Politics*.
- HANEGRAAFF, M. (2015). Transnational advocacy over time: business and NGO mobilization at UN climate summits. *Global Environmental Politics*.
- HARRIS, P. G. (1999). Common but differentiated responsibility: the Kyoto protocol and United States policy. *NYU Environmental Law Journal*, 7, 27.
- HOVI, J., SPRINZ, D. F., & UNDERDAL, A. (2009). Implementing long-term climate policy: Time inconsistency, domestic politics, international anarchy. *Global Environmental Politics*, 9(3), 20-39.
- IWATA, H., & OKADA, K. (2014). Greenhouse gas emissions and the role of the Kyoto Protocol. *Environmental Economics and Policy Studies*, 16(4), 325-342.
- JACOBS, M. (2016). High pressure for low emissions: How civil society created the Paris climate agreement. *Juncture*, 22(4), 314-323.
- KECK, M. E., & SIKKINK, K. (2014). *Activists beyond borders: Advocacy networks in international politics*. Ithaca, NY; London: Cornell University Press.
- MARSHALL ISLANDS. (2015). *Coalition of High Ambition Press Briefing*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-09-18-30-coalition-of-high-ambition> [Accessed on 31 May 2017].
- MCPHERSON, A. M. (2012). Let Them Eat Carbon: The End of the Kyoto Protocol. *Georgia Journal of International and Comparative Law*, 41, 219-250.
- MITCHELL, R. B. (1994). Regime design matters: intentional oil pollution and treaty compliance. *International Organization*, 48(03), 425-458.
- NAJAM, A. (2005). Developing countries and global environmental governance: From contestation to participation to engagement. *International Environmental Agreements: Politics, Law and Economics*, 5(3), 303-321.
- NESPOR, S. (2016). La lunga marcia per un accordo globale sul clima: dal protocollo di Kyoto all'accordo di Parigi. *Rivista trimestrale di diritto pubblico*, (1), 81-121.
- NEWELL, P., & PATERSON, M. (1998). A climate for business: global warming, the state and capital. *Review of International Political Economy*, 5(4), 679-703.

OBERGASSEL, W., ARENS, C., HERMWILLE, L., KREIBICH, N., MERSMANN, F., OTT, H. E., & WANG-HELMREICH, H. (2016). Phoenix from the Ashes—An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change. *Wuppertal Institute for Climate, Environment and Energy*, 1, 1-54.

*Paris Agreement*, Paris, 12 December 2015. [online]. Available from UNFCCC Website at: [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php) [Accessed on 31 May 2017]-

RAJAMANI, L. (2012). The Durban platform for enhanced action and the future of the climate regime. *International and Comparative Law Quarterly*, 61(02), 501-518.

RAJAMANI, L. (2016). Ambition and differentiation in the 2015 Paris Agreement: Interpretative possibilities and underlying politics. *International & Comparative Law Quarterly*, 65(2), 493-514.

RAMAKRISHNA, K. (2000). The unfccc—history and evolution of the climate change negotiations. *Climate Change and Development. Yale School of Forestry and Environmental Studies, New Haven, CT, and UNDP, New York, NY*, 47-62.

SAND, P. H. (1990). Lessons learned in global environmental governance. *Boston College Environmental Affairs Law Review*, 18, 213-277.

SIERRA CLUB. (2015) *Sierra Club: First Annual "Unjust Transition" Award*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-10-10-00-sierra-club-first-annual-unjust-transition-award> [Accessed on 31 May 2017]

SPASH, C. L. (2016). This Changes Nothing: The Paris Agreement to Ignore Reality. *Globalizations*, 1-6.

SPRINZ, D. F. (2009). Long-term environmental policy: definition, knowledge, future research. *Global Environmental Politics*, 9(3), 1-8.

SUSTAINABLE MARKETS FOUNDATION – 350.org. (2015a). *Press Briefing Sustainable Markets Foundation - 350.org*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-02-12-30-sustainable-markets-foundation-350-org> [Accessed on 31 May 2017]

SUSTAINABLE MARKETS FOUNDATION – 350.org. (2015b). *Press Briefing Sustainable Markets Foundation - 350.org*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-10-12-00-sustainable-markets-foundation-350-org> [Accessed on 31 May 2017].

SustainUS and YOUNGO (2015). *Press Briefing SustainUS/YOUNGO*. [video] Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-05-16-00-sustainus-youngo> [Accessed 31 May 2017].

ULLAL, N. R. (2013). Successor for the Kyoto Protocol-Challenges and Options, A. *New Zealand Journal of Environmental Law*, 17, 81-122.

UNDERDAL, A. (2010). Complexity and challenges of long-term environmental governance. *Global Environmental Change*, 20(3), 386-393.

on Climate United Nations, Framework Convention Change. *List of participants. Part three: Intergovernmental organizations (East African Community – The Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden); non-governmental organizations*. FCCC/CP/2015/INF.3 (Part 3) (11 December 2015). Available from: [http://unfccc.int/meetings/paris\\_nov\\_2015/session/9057/php/view/documents.php#c](http://unfccc.int/meetings/paris_nov_2015/session/9057/php/view/documents.php#c)

UNFCCC. (2015a). *Leaders Event - Statements by Heads of State and Government - La Seine [part 1]*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-11-30-12-00-conference-of-the-parties-twenty-first-session-conference-of-the-parties-serving-as-the-meeting-of-the-parties-to-the-kyoto-protocol-eleventh-session> [Accessed on 31 May 2017].

UNFCCC. (2015b). *Conference of the Parties (COP), 11th meeting*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-12-17-26-conference-of-the-parties-cop-11th-meeting> [Accessed on 31 May 2017].

UNFCCC. (2017). *The Paris Agreement*. [online]. Available at: [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php) [Accessed on 12 June 2017]

UNFCCC, Secretariat. *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum. Part two: Action taken by the Conference of the Parties at its twenty-first session*. FCCC/CP/2015/10/Add.1

UNITED STATES OF AMERICA. (2015a). *Press Briefing United States of America*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-02-16-00-united-states-of-america> [Accessed on 31 May 2017]

UNITED STATES OF AMERICA. (2015b). *United States of America: Press briefing with Special Envoy for Climate Change Todd D. Stern*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-04-14-30-united-states-of-america> [Accessed on 31 May 2017].

UNITED STATES OF AMERICA. (2015c). *U.S. Secretary of State John F. Kerry: Remarks on COP21 and Action Beyond Paris*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-09-14-00-john-f-kerry> [Accessed on 31 May 2017]

VALSANIA, M. (2017). Da New York a Tesla, città, aziende e Stati: si allarga il fronte Usa dei «ribelli» anti-Trump. *Il Sole 24 ore*. [online]. Available at: <http://www.ilsole24ore.com/art/mondo/2017-06-02/aziende-e-stati-usa-si-allarga-fronte-ribelli-anti-trump-184910.shtml> [Accessed on 4 June 2017]

VON STEIN, J. (2008). The international law and politics of climate change: Ratification of the United Nations Framework Convention and the Kyoto Protocol. *Journal of Conflict Resolution*, 52(2), 243-268.

WE MEAN BUSINESS COALITION. (2015). *We Mean Business Press Briefing*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-12-12-13-30-we-mean-business> [Accessed on 31 May 2017].

WEDO. (2015). *Women's Environment and Development Organization: Women's Red Flags for the Climate Talks*. [video]. Available at: <https://unfccc6.meta-fusion.com/cop21/events/2015-11-30-15-30-women-s-environment-and-development-organization-women-s-red-flags-for-the-climate-talks> [Accessed on 31 May 2017].

## SINTESI

L'importanza dei cambiamenti climatici e il loro impatto sull'ambiente e sulle attività umane hanno fatto parte del dibattito politico internazionale fin dalla fine degli anni '70, periodo in cui si è tenuta la prima Conferenza Mondiale sul Clima. Ciò nonostante, prima che i tempi fossero maturi per permettere agli Stati di passare all'azione, fu necessario aspettare la fine degli anni '80 con la creazione del Gruppo Intergovernativo sul Cambiamento Climatico (IPCC) e soprattutto l'anno 1992, che vide aprirsi la Conferenza di Rio sull'Ambiente, durante la quale venne approvata la Convenzione Quadro delle Nazioni Unite sui Cambiamenti Climatici (UNFCCC) (Giorgetti, 1999). Il Gruppo Intergovernativo sul Cambiamento Climatico, creato nel 1988 da due agenzie ONU, l'Organizzazione Meteorologica Mondiale (WMO) e il Programma delle Nazioni Unite per l'Ambiente (UNEP), è formato da svariati esperti appartenenti a diversi ambiti scientifici che hanno contribuito ad informare il dibattito internazionale sui cambiamenti climatici, fornendo rapporti periodici riguardanti il nesso causale tra l'attività umana e i cambiamenti climatici, i possibili sviluppi futuri della questione e soprattutto le raccomandazioni per le politiche ambientali da attuare (Breidenich et al, 1998). Sulla base del primo rapporto del Gruppo, pubblicato nel 1990, venne ritenuto necessario ancorare la protezione dell'ambiente, ma soprattutto la limitazione degli effetti dei cambiamenti climatici causati da attività umane, ad un trattato internazionale che ponesse le basi per una forte e duratura cooperazione multilaterale in materia ambientale. Il risultato fu la Convenzione Quadro delle Nazioni Unite sui Cambiamenti Climatici, un documento legalmente vincolante, sottoscritto e ratificato da pressoché l'intera comunità internazionale (Nespor, 2016). Nonostante il consenso raggiunto all'approvazione della Convenzione Quadro, l'accanito dibattito riguardo il suo contenuto aveva spaccato in due schieramenti opposti l'insieme dei Paesi partecipanti alla Conferenza. Le linee di frattura ricalcavano il confine tra il Nord e il Sud del mondo, separando gli Stati sviluppati da quelli in via di sviluppo. L'oggetto del contenzioso era la rispettiva attribuzione delle responsabilità dei cambiamenti climatici e la conseguente definizione degli oneri che sarebbero dovuti derivarne. In altre parole, i Paesi in via di sviluppo, appellandosi a principi di equità e giustizia, si rifiutavano di far fronte agli stessi obblighi delle loro controparti sviluppate, inficiando così il loro sviluppo economico e la loro lotta contro la povertà, alla luce del fatto che storicamente avevano contribuito in maniera nettamente più limitata alle emissioni di gas serra, ormai comunemente considerati alla radice dei cambiamenti climatici. Gli Stati sviluppati, d'altro canto, considerando la portata globale

della questione del clima e del degrado ambientale a carattere industriale, insistevano affinché, seppur in minor parte, anche il Sud del mondo partecipasse agli sforzi collettivi per mitigare l'effetto dell'attività umana sul clima (Harris, 1999). Il compromesso raggiunto venne condensato nel principio delle “responsabilità comuni ma differenziate” (common but differentiated responsibilities, CBDR), alla base non solo della Convenzione Quadro ma anche di tutti i successivi strumenti internazionali atti a combattere i cambiamenti climatici, il Protocollo di Kyoto e l'Accordo di Parigi (Rajamani, 2016).

Dal momento che la Convenzione Quadro non conteneva alcun provvedimento sostanziale per procedere alla riduzione delle emissioni di gas serra nell'atmosfera o all'adattamento ai cambiamenti ormai avvenuti, l'organo principale creato dalla Convenzione, la Conferenza delle Parti (COP), si riunì ripetutamente in rapida successione per colmare questa lacuna, attraverso l'approvazione di un Protocollo che stabilisse degli obiettivi quantitativi di riduzione delle emissioni (Ramakrishna, 2000). Al momento della creazione di un simile accordo, la COP dovette anche occuparsi dell'interpretazione del principio delle CBDR in modo tale che potesse venire messo in pratica in quello che sarebbe poi stato il Protocollo di Kyoto. Al suo primo incontro, dunque, la COP tracciò, in quello che è comunemente chiamato il Berlin Mandate, le linee guida secondo le quali declinare il principio di differenziazione, stabilendo due regimi differenti: uno obbligatorio, completo di obiettivi di riduzione delle emissioni e relativi limiti temporali per i Paesi tati sviluppati, compresi nell'Annex II della Convenzione Quadro, e un altro, non obbligatorio, per quelli in via di sviluppo (Nespor, 2016). Questa netta distinzione tra gli oneri facenti capo ai Paesi sviluppati e quelli non sviluppati, poi trasposta nel Protocollo di Kyoto in vigore fino al 2020, ha limitato considerevolmente l'efficacia del regime internazionale per il clima, tenendo poco conto delle rapide trasformazioni subite dall'ordine economico mondiale in seguito allo sviluppo di India e Cina, e alienando inoltre il supporto degli Stati Uniti d'America, uno dei maggior produttori di gas serra (Ullal, 2013).

Un altro ostacolo alla creazione e all'attuazione di un efficiente regime internazionale sul clima è sicuramente il carattere a lungo termine della politica ambientale in generale. Per identificare una determinata problematica come una tematica a lungo termine è necessario che la stessa (1) abbia una durata superiore ad una generazione umana, (2) sia caratterizzata da considerevole incertezza, esacerbata dalla sua lunga durata, e (3) sia paragonabile a questioni relative a beni pubblici (Sprinz, 2009). I cambiamenti climatici

rispecchiano perfettamente queste condizioni. Per prima cosa, le loro conseguenze colpiranno diverse generazioni attraversando decenni, in secondo luogo, l'impossibilità di prevederne con chiarezza i risvolti futuri implica una dimensione di incertezza che alle volte ostacola l'azione politica a questo proposito. Infine, dal momento che l'ambiente rappresenta un vero e proprio bene comune, è soggetto ai rischi del fenomeno del free riding sia per quanto riguarda le origini del problema dei cambiamenti climatici che la sua risoluzione. Se da una parte, infatti, le generazioni passate hanno basato il loro benessere economico sull'emissione incontrollata di gas serra nell'atmosfera, condannando le generazioni successive ad affrontarne le esternalità negative, dall'altra, le generazioni presenti sono incentivate al free riding per quello che riguarda le politiche di mitigazione delle emissioni, facendo affidamento sugli sforzi altrui senza contribuire in prima persona (Ibid.). Alcune analisi (Hovi et al, 2009) hanno ampliato l'elenco dei possibili impedimenti alla creazione di un adeguato regime internazionale sui cambiamenti climatici ponendo l'accento non solo sullo stato di anarchia in cui versano le relazioni internazionali, ma anche sul loro rapporto biunivoco con la politica interna degli Stati. In particolare, Hovi et al (2009) hanno sottolineato come il carattere a lungo termine delle politiche ambientali le renda soggette ai cosiddetti time inconsistency e domestic politics issues. Per time inconsistency si intende il rischio che un soggetto politico, seppur intenzionato ad attuare una ben determinata politica ambientale, la abbandoni in favore di altre questioni che rappresentano un beneficio immediato piuttosto che futuro. Il termine time inconsistency si riferisce infatti all'incongruenza che esiste tra il rapporto costo – benefici nel breve e nel lungo periodo, rendendo così le politiche ambientali se non di secondaria importanza, comunque di limitato valore politico nel breve ciclo della politica interna. Ed è proprio la visione a breve termine della maggioranza dei soggetti politici nazionali, concentrati su singoli mandati o legislature, alla base dei domestic politics issues (Hovi et al, 2009). La sfera politica nazionale infatti interagisce con le politiche ambientali a livello internazionale in due diversi modi: in primo luogo la ridotta durata dei cicli politici nazionali rende i governi restii a investire tempo e risorse in politiche di cui dovranno sostenere i costi senza trarne i benefici; inoltre anche la configurazione e aggregazione degli interessi su scala nazionale può influenzare negativamente la messa in opera di politiche ambientali. Un numero considerevole di iniziative a protezione dell'ambiente infatti consiste in provvedimenti che distribuiscono benefici diffusi alla popolazione ma che d'altra parte concentrano i costi solo su un piccolo settore della cittadinanza, questa dinamica si scontra perfettamente con le

tendenze relative alla mobilitazione degli interessi all'interno di uno stato, dove sono proprio gli interessi specifici ad essere mobilitati più facilmente.

Nonostante le numerose difficoltà che avrebbero potuto inficiare la cooperazione internazionale nell'ambito dei cambiamenti climatici, il sistema creato dalla Convenzione Quadro ha continuato a dimostrarsi un perfetto forum di discussione per favorire un approccio solidale e multilaterale alla questione. Dopo l'entrata in vigore del protocollo di Kyoto, proprio a causa della percettibile inefficienza di questo strumento, la COP ricominciò immediatamente un nuovo periodo di conferenze, summit e consultazioni per giungere finalmente alla creazione di un nuovo accordo, più inclusivo del suo predecessore (Ullal, 2013). Perché la comunità internazionale riuscisse ad approdare ad un consenso sull'Accordo di Parigi nel 2015, furono necessarie più di 15 differenti incontri della COP, in un arco di più di vent'anni. Il risultato finale, il cosiddetto Paris Outcome, composto dall'Accordo di Parigi e dalla relativa decisione di approvazione della COP, rappresenta l'inizio di una nuova era per la governance internazionale sul clima (Falkner, 2016; Rajamani, 2016). Innanzitutto, l'Accordo di Parigi rappresenta un nuovo approccio al principio della differenziazione, stabilendo non dei regimi differenti per diverse categorie di nazioni, ma obiettivi di mitigazione e adattamento specifici per ogni nazione, delineati dagli Stati stessi in base alle loro rispettive capacità e condizioni. Questi obiettivi, detti Nationally Determined Contributions (NDCs), saranno poi rivalutati e sostituiti con un piano ancor più ambizioso del precedente ogni cinque anni, in un processo di pledge and review, che oltrepassa così il limite della differenziazione alla base del fallimento del Protocollo di Kyoto. Oltre ad una sostanziale reinterpretazione del principio delle "responsabilità comuni ma differenziate", l'Accordo di Parigi rappresenta una rottura con il precedente regime internazionale sotto due ulteriori punti di vista. Il primo riguarda l'attuazione dell'accordo, il secondo il ruolo delle organizzazioni non governative al suo interno. Per quello che concerne l'attuazione, l'Accordo di Parigi fa affidamento sulla trasparenza e su un processo non conflittuale di global stocktake per assicurare la partecipazione e il rispetto degli impegni da parte dei Paesi firmatari, invece che su specifici organismi di controllo e meccanismi punitivi come il Protocollo di Kyoto. Invece, riguardo lo status delle organizzazioni non governative, la decisione della COP che accompagna l'accordo invita gli organismi non governativi a contribuire al raggiungimento degli obiettivi del Paris Outcome secondo le loro capacità e se possibile a farsi promotori dell'ambizione che sta alla base dell'accordo stesso. Ed è proprio alla portata senza precedenti del coinvolgimento degli organismi non governativi

nel processo di negoziazione della COP21 a cui è stato attribuito l'esito positivo dell'incontro (Hale, 2016; Falkner, 2016; Jacobs, 2016), nonostante altre analisi sottolineino il carattere segreto e poco trasparente degli stessi negoziati (Dimitrov, 2016). Diversi studi sembrano essere concordi nel considerare come fonte dell'influenza delle ONG nel settore della politica ambientale la loro capacità di fornire informazioni tecniche e mettere a disposizione competenze che potrebbero mancare gli attori statali, riducendo l'incertezza e proponendo soluzioni innovative (Böhmelt, 2013; Betsill e Corell, 2008). L'influenza delle ONG è intesa come la trasmissione intenzionale di informazioni da un soggetto ad un altro che, in ultima analisi, devia il comportamento di quest'ultimo dal percorso che sarebbe stato seguito in assenza di tali informazioni (Corell e Betsill, 2001: 51). Questa definizione apre due percorsi di indagine, una per quanto riguarda la trasmissione di informazioni, conoscenze e le competenze rilevanti dalle ONG agli stati e l'altra relative alla successiva modifica del comportamento di questi ultimi. L'operationalizzazione del coinvolgimento delle ONG nei negoziati avviene attraverso cinque indicatori principali. Innanzitutto, l'influenza delle ONG sull'agenda della conferenza, sulla riqualificazione delle questioni ambientali prima o durante i negoziati e sulla posizione degli attori chiave, che nel caso dei vertici internazionali non sono altro che gli Stati. Gli ultimi due indicatori si riferiscono all'esito dei negoziati, uno riguarda gli aspetti procedurali del risultato: "L'accordo crea nuove istituzioni per facilitare la partecipazione delle ONG ai processi decisionali futuri? L'accordo riconosce il ruolo delle ONG nell'attuazione?" (Betsill e Corell, 2008: 35), l'altro gli aspetti sostanziali dell'accordo raggiunto.

Le strategie attraverso le quali le organizzazioni non governative tentano di esercitare la propria influenza e di spingere altri soggetti politici ad adottare il loro punto di vista e di conseguenza le loro proposte sono molteplici. Nel loro studio sui transnational advocacy networks Keck and Sikkink (1999) ne hanno identificate almeno quattro principali: (1) information politics, attraverso le quali le ONG selezionano informazioni rilevanti alle loro campagne e le rielaborano per ripresentarle in modo tale da renderle efficaci e sfruttare al massimo il loro impatto; (2) symbolic politics, attraverso le quali le ONG tentano di comunicare una situazione o una problematica ad un pubblico lontano mediante l'uso di simboli, eventi e testimonianze; (3) leverage politics, attraverso le quali le ONG fanno uso delle loro risorse per spingere gli altri soggetti all'azione, queste risorse possono essere materiali, nel caso di ONG rappresentanti aziende e business, oppure morali nel caso di ONG fondate su valori e identità comuni; (4) accountability politics,

attraverso queste strategie, le ONG intendono assicurarsi che gli altri soggetti politici, ma in particolare gli Stati, tengano fede agli impegni già presi o alle promesse fatte. A queste quattro principali strategie si devono aggiungere le politiche di monitoraggio, per mezzo delle quali le ONG usano informazioni di dominio pubblico per far sì che i governi nazionali rispettino le proprie responsabilità vis-à-vis accordi internazionali, dichiarazioni ufficiali e legislazione preesistente.

La mia analisi si concentra sul ruolo delle ONG con sede negli Stati Uniti d'America, in virtù della storica riluttanza che questi ultimi hanno dimostrato nel partecipare ad un qualsivoglia strumento di diritto internazionale sui cambiamenti climatici che avesse effetti pervasivi sul loro ordinamento interno. Inoltre, data la vastità e la varietà delle questioni discusse all'interno dei negoziati della COP21, verranno prese in considerazione solo sue problematiche principali: l'ambition package e l'inclusione dei diritti umani nel testo dell'Accordo.

L'ambition package nel contesto dell'accordo di Parigi fa riferimento alla struttura politica che guiderà la governance del clima alla sua entrata in vigore. I suoi diversi aspetti rappresentano: gli obiettivi a lungo termine dell'accordo, cioè la limitazione dell'incremento della temperatura globale e la transizione verso un'economia pulita, il sistema di pledge and review sul quale esso si fonda ed infine gli aspetti temporali dell'accordo, l'intervallo di tempo per la presentazione dei contributi nazionali e la loro valutazione, oltre alla data di inizio del global stocktake. In questo ambito, le ONG supportavano largamente la stessa posizione, sostenendo un limite di incremento della temperatura globale di 1.5°C, la totale decarbonizzazione dell'economia mondiale, cicli di cinque anni per la revisione dei contributi nazionali con inizio nel 2018 e la data di partenza del global stocktake fissata per il 2020. Nonostante ci fosse consenso tra le diverse ONG presenti alla Conferenza riguardo l'ambition package, la loro rielaborazione della questione è avvenuta lungo due linee molto differenti. Da una parte, le ONG ambientaliste, accompagnate da altre organizzazioni rappresentanti gli interessi delle popolazioni aborigene, delle donne, dei giovani e dei lavoratori, difendevano questa posizione perché unica garanzia ai loro occhi dell'efficacia dell'accordo e della sopravvivenza di ambienti, popolazioni e Paesi mortalmente minacciati dai cambiamenti climatici; dall'altra, le lobby industriali e i fondi di investimento, premevano perché l'ambizione e la chiarezza dell'accordo rappresentassero un segnale inequivocabile da parte dei governi al settore dell'economia della loro ferrea volontà di combattere i cambiamenti climatici, in modo tale da incentivarne la partecipazione in iniziative di

sviluppo sostenibile e decarbonizzazione. Gli Stati Uniti, inizialmente legati ad un atteggiamento abbastanza moderato sull'ambition package, nel corso della Conferenza hanno allineato la loro posizione con quella delle ONG, adottando quasi alla lettera la rielaborazione della questione proposta dalle organizzazioni rappresentanti industrie e business. Il risultato finale, delineato nell'Accordo di Parigi, riflette largamente le richieste delle ONG, coinvolgendole per la prima volta formalmente nell'attuazione vera e propria dell'accordo e riconoscendo il valore del loro contributo, soprattutto a livello nazionale.

Analizzando il dibattito sull'inclusione dei diritti umani nel testo operativo del trattato, si affronta una dinamica completamente diversa. Mentre le ONG si sono sforzate di ridefinire i cambiamenti climatici in termini di diritti umani, le loro rimostranze non sono del tutto state prese in considerazione. Il testo del trattato fa effettivamente cenno ad una serie di tematiche care alle ONG in questione, come il diritto dei lavoratori ad una giusta transizione ad un'economia sostenibile, la parità di genere, l'emancipazione delle donne, la tutela dei diritti delle popolazioni indigene, il diritto alla salute e l'applicazione del principio dell'equità intergenerazionale, tuttavia questi riferimenti sono parte del Preambolo dell'accordo piuttosto che dell'articolo 2 del testo operativo come speravano le ONG. Inoltre, nonostante le loro ripetute proteste e tentativi di pressare gli Stati a tenere fede al loro apparente supporto per un'efficace inclusione dei diritti umani nel regime sul clima, le ONG non sono riuscite a modificare la posizione di alcun soggetto chiave e soprattutto non sono state in grado di presentare un fronte unito come nel caso dell'ambition package. Mentre riguardo quest'ultimo infatti tutte le ONG potevano dirsi d'accordo nel chiedere il maggior impegno possibile da parte degli Paesi membri, per quanto concerne l'inclusione dei diritti umani, le uniche ONG attive a questo proposito erano quelle appartenenti alle constituencies rappresentanti i lavoratori e i sindacati, la gioventù, le donne, le popolazioni indigene e le più radicali tra le associazioni ambientaliste.

In sintesi, l'esito effettivo della conferenza ha rispecchiato le preferenze delle ONG solo quando tutte le parti interessate hanno spinto per lo stesso contenuto politico, come nel caso dell'ambition package, in cui tutte le constituencies hanno espresso la volontà unanime di incrementare gli impegni e rendere la struttura temporale dell'accordo più dinamica, assieme ai più vulnerabili Paesi in via di sviluppo e, infine, ad altre soggetti come l'UE o gli Stati Uniti. Tuttavia, i cambiamenti gradualmente che si possono osservare nella posizione di paesi come gli Stati Uniti, potrebbero dimostrarsi il risultato dell'azione

di altri Stati, piuttosto che l'effetto delle leverage strategies utilizzate dalle ONG. Inoltre, pur attribuendo una maggiore importanza all'influenza delle ONG, resta da vedere se il loro successo sia da ascrivere quasi interamente all'azione delle lobby industriali. Ciò comporterebbe una valutazione molto diversa del ruolo delle altre ONG rappresentanti interessi pubblici e valori comuni, la cui azione resta indiscutibilmente più efficace nell'ambito della politica nazionale. Tuttavia è proprio la continua interazione tra il piano nazionale e quello internazionale nell'ambito delle politiche ambientali, a permettere di rivalutare l'importanza delle ONG rispetto al regime internazionale sui cambiamenti climatici. Come il caso degli Stati Uniti, che presentemente hanno scelto di ritirarsi dall'Accordo di Parigi, può dimostrare, anche negli ambienti politici più ostili, l'azione delle organizzazioni non governative rimane fondamentale per il futuro della politica ambientale. Se da un lato le organizzazioni non governative rappresentanti interessi economici possono stimolare e spingere le istituzioni politiche a tenersi al passo con il progresso tecnologico e a guidare le nazioni verso gli obiettivi della sostenibilità e della decarbonizzazione, dall'altro le organizzazioni rappresentanti interessi comuni e valori condivisibili dai comuni cittadini possono far leva sulla mobilitazione e l'attivismo per favorire un profondo cambiamento sociale, mirando a cambiare le proprie unità nazionali dall'interno.