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The fight against climate change: did the European Union succeed in exerting a leadership role in the Kyoto process?

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Abbreviation list

AGBM	Ad hoc Group on the Berlin Mandate
AOSIS	Alliance of Small Island States
BSA	Burden Sharing Agreement
CDM	Clean Development Mechanism
CEIT	Country with Economy In Transition to a market economy
COP	Conference of the Parties to the Framework Convention on Climate Change
CO_2	Carbon dioxide
DC	Developing Country
DG	Directorate General
EC	European Community
EEC	European Economic Community
EU	European Union
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EU15	EU Member States before the enlargement of 1 May 2004
EURATOM	European Atomic Energy Community
EIT	Economies in Transition
FAR	First IPCCC Assessment Report
FCCC	Framework Convention on Climate Change
G-77	Group of 77
GDP	Gross Domestic Product

GHG	Greenhouse Gas
IC	Industrialized Country
IET	International Emissions Trading
IMO	International Maritime Organization
INC	Intergovernmental Negotiating Committee (on the FCCC)
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
JUSCANZ	Coalition of non-EU Annex I Parties guided by Japan, Switzerland, Canada, Norway and New Zealand
JUSSCANNZ	Coalition of non-EU Annex I Parties guided by Japan, United States, Switzerland, Canada, Norway and New Zealand
KP	Kyoto Protocol
LDC	Least Developed Country
N_2O	Nitrous oxide
NGO	Non-Governmental Organization
NOx	Nitrogen oxides
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of Oil and Petroleum Exporting Countries
PAM	Policies and Measures
PFC	Perfluorocarbon
QELRC	Quantified Emission Limitation and Reduction Commitment
QELROs	Quantified Emission Limitation and Reduction Objectives
REIO	Regional Economic Integration Organization
SEA	Single European Act

SF_6	Sulphur oxides
TEC	Treaty of European Community
TEU	Treaty of European Union
TFEU	Treaty on the Functioning of the EU
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	UN General Assembly
VA	Voluntary Agreement
WMO	World Meteorological Organization
WTO	World Trade Organization

Abstract

Al termine della Seconda Guerra Mondiale l'Europa non era che un campo di macerie bisognoso di essere ricostruito. Gli enormi danni provocati da forme estreme di nazionalismo, quali nazismo e fascismo, divennero inoppugnabili. Nel frattempo, il totalitarismo comunista dell'Unione Sovietica premeva sul confine est. Iniziava a prendere forma la Guerra Fredda. Di fronte a questo scenario, i più alti esponenti politici europei di allora ritennero necessario gettare le basi per ricostruire il vecchio continente, assicurando il benessere dei popoli e una pace duratura.

Il primo vero e proprio passo verso l'integrazione europea risale alla creazione, con il Trattato di Parigi del 1951, della Comunità europea del carbone e dell'acciaio (Ceca). Sulla base di questo accordo, i sei paesi fondatori (Belgio, Francia, Italia, Germania Ovest, Lussemburgo e Paesi Bassi) accettarono di cedere una parte della loro sovranità in materia di carbone e acciaio, a favore di un'istituzione comune e indipendente dagli Stati. Fu l'inizio di una sovranità condivisa tra stati membri e istituzione europee, ad oggi sancita ufficialmente nel Trattato sul Funzionamento dell'Unione Europea (TFEU). Nello specifico, il Trattato di Riforma adottato a Lisbona nel 2007 organizzò le competenze UE suddividendole in tre grandi categorie: competenze esclusive (art 3. TFEU) in cui solo l'UE può legiferare e adottare atti vincolanti, competenze concorrenti (art 4. TFEU) in cui sia l'UE che gli stati membri possono legiferare e adottate atti vincolanti, e competenze di sostegno (art 6. TFEU) in cui l'Unione può solamente sostenere, coordinare o completare l'azione dei paesi dell'UE.

Il Trattato di Parigi del 1951 gettò le basi per uno sviluppo economico comune che avrebbe dovuto garantire il mantenimento della pace. Partendo dall'assunto che il commercio produce un'interdipendenza tra i paesi che riduce il rischio di conflitti, l'economia diventò allora il mezzo principale per raggiungere un obiettivo politico comune: la pace e la stabilità del continente europeo. Da allora, l'organizzazione subì un graduale allargamento arrivando oggi a comprendere 28 stati membri. A questo proposito, è d'obbligo precisare che il 29 Marzo 2017, come previsto dall'articolo 50 del Trattato sull'Unione Europea (TEU), il Regno Unito notificò al Consiglio europeo l'intenzione di recedere dall'organizzazione. I negoziati iniziarono il 19 Giugno dello stesso anno e sono tuttora in via di evoluzione.

Accanto a uno degli obiettivi cardine dell'Unione - quello della creazione di un mercato unico per garantire la libera circolazione di merci, servizi, capitali e persone - nel tempo l'organizzazione finì con l'espandere le sue competenze a tutta una serie di ambiti che spaziano dalla gestione delle relazioni esterne alla sicurezza, dalla giustizia all'immigrazione, dal settore energetico a quello

ambientale, e molto altro ancora. A tal proposito, per riflettere sull'ampliamento delle politiche europee, è fondamentale sottolineare che nel 1992, con l'adozione del Trattato di Maastricht, l'accezione puramente economica dell'organizzazione (racchiusa nell'acronimo CEE) venne rimossa a favore di un Unione basata su tre pilastri: il primo riguardante le Comunità Europee, il secondo relativo alla politica estera e alla sicurezza comune, il terzo dedito alla cooperazione giudiziaria e di polizia in materia penale. Nel complesso, il Trattato portò alla nascita dell'Unione Europea, allargando notevolmente la sfera di competenza della vecchia Comunità Economica Europea. Successivamente, con l'entrata in vigore del Trattato di Lisbona nel 2009, i tre pilastri vennero aboliti, l'Unione Europea semplificò la sua struttura e acquisì personalità giuridica.

L'indagine condotta in questa tesi si focalizza su una della sfide più grandi mai raccolte dall'Unione Europea, la lotta al cambiamento climatico. La politica dell'Unione in materia ambientale risale agli anni '70 del secolo scorso. Nello specifico, in occasione del Consiglio europeo tenutosi a Parigi nel 1972, i capi di governo decisero in comune accordo di iniziare ad elaborare un programma d'azione per tutelare la salubrità dell'ambiente a livello comunitario. L'atto unico europeo del 1987, creò la prima base giuridica per una politica ambientale comune. Da allora, le successive revisioni dei Trattati UE continuarono a rafforzare l'impegno della Comunità a favore della tutela ambientale.

A partire dai primi anni '90, parallelamente agli sforzi intrapresi a livello internazionale, l'Unione gettò le basi per il consolidamento di una politica finalizzata a contrastare una delle problematiche più complesse a livello ambientale, il cambiamento climatico. I dati analizzati dal Gruppo intergovernativo sul cambiamento climatico (IPCC) ed esposti nel primo rapporto ufficiale del giugno 1990, finirono col confermare i sospetti riguardo le probabili cause dei cambiamenti climatici in atto. Il rapporto spiegò chiaramente che l'aumento della temperatura osservato sin dal 1800 era da imputare con ogni probabilità ad attività di origine antropica tra cui si distinguono i cambiamenti nell'uso del suolo e le emissioni di gas serra. Come spiegato nel rapporto, gli impatti di queste attività avrebbero finito col ripercuotersi pesantemente sull'intero pianeta, e di conseguenza su tutte le regioni d'Europa, causando gravissimi danni non solo all'ambiente ma anche all'intera società e alla salute dell'uomo.

A fronte del drammatico scenario delineato dalla comunità scientifica internazionale, nei primi anni '90 la Comunità Europea diede vita ad un complesso quadro politico-legislativo atto a ridurre le emissioni di gas serra e contrastare l'aumento della temperatura globale. A tal proposito, è necessario sottolineare che le politiche e le misure volte a mitigare gli effetti del cambiamento climatico sono da sempre state oggetto di grande attenzione sia da parte delle istituzioni europee che degli stati membri. Questo perché le politiche sul clima per loro natura hanno il potere di influenzare

un'ampia gamma di settori sia di tipo primario (agricoltura, allevamento, estrazione) che di tipo secondario (industria, trasporti), per non parlare dell'impatto che esse hanno sul commercio, sul settore energico, e più in generale sull'economia nel suo complesso.

Nel giugno 1990, in concomitanza all'uscita del primo rapporto IPCC, il Consiglio dell'Unione Europea propose di fissare dei target di riduzione ed elaborare tutta una serie di strategie per limitare le emissioni di gas serra a livello europeo. Il primo passo verso lo sviluppo di una politica europea contro il cambiamento climatico fu la dichiarazione rilasciata dal Consiglio dei Ministri dell'ambiente e dell'energia di voler stabilizzare le emissioni di anidride carbonica dell'organizzazione ai livelli del 1990 entro l'anno 2000. Indubbiamente l'iniziativa portò la Comunità Europea a distinguersi sul piano internazionale, in quanto fu la prima ad elaborare degli obiettivi per la riduzione delle emissioni di carbonio. Diversamente, gli Stati Uniti e altri paesi appartenenti all'Organizzazione per la Cooperazione e lo Sviluppo Economico (OECD), almeno fino alla prima metà degli anni '90 dimostrarono di essere piuttosto scettici nei confronti della questione. Di conseguenza, oltre a prefiggersi obiettivi piuttosto ambiziosi all'interno dei propri confini, la Comunità Europea iniziò ad imporsi come attore trainante anche all'interno del processo negoziale delle Nazioni Unite, che in occasione del Summit tenutosi a Rio de Janeiro nel 1992 portò all'adozione della Convenzione quadro delle Nazioni Unite sui cambiamenti climatici (UNFCCC), il principale accordo internazionale sull'azione per il clima. Nonostante quest'ultimo rappresentasse un notevole punto di svolta nella lotta al cambiamento climatico, gli obiettivi e le disposizioni contenute al suo interno non avevano natura vincolante, ragion per cui la comunità internazionale ritenne opportuno predisporre al più presto un processo di negoziati che portasse all'adozione di disposizioni più severe e concrete.

Fu così che nel 1997 gli stati parte della Convenzione approvarono il Protocollo di Kyoto, che introdusse per la prima volta degli obiettivi di riduzione giuridicamente vincolanti per i paesi industrializzati. La Convenzione quadro diventò quindi lo strumento base che consentì ai paesi di collaborare al fine di limitare l'aumento della temperatura globale e le sue conseguenze. Secondo quanto stabilito dalla UNFCCC, gli stati parte della Convenzione si sarebbero incontrati annualmente nella "Conferenza delle Parti" (COP), al fine di monitorare i progressi compiuti dalla comunità internazionale nella lotta al cambiamento climatico.

La prima Conferenza delle Parti (COP-I) tenutasi a Berlino dal 28 Marzo al 7 Aprile 1995, segnò l'inizio dei negoziati che nel 1997 portarono all'adozione del Protocollo di Kyoto. In occasione della COP-I, la comunità internazionale istituì il "Mandato di Berlino" che sancì l'inizio di una fase di analisi e ricerca della durata di due anni, per negoziare una serie di azioni volte alla salvaguardia dell'ambiente non compromettendo la competitività economica dei paesi. Il mandato, a dispetto di

quanto richiesto dagli Stati Uniti, stabilì che i destinatari degli obiettivi vincolanti sarebbero stati i soli paesi industrializzati, in quanto ritenuti i principali responsabili del riscaldamento globale nonché dei cambiamenti climatici in atto. I paesi in via di sviluppo invece, a causa delle loro scarse capacità e limitate risorse economiche, sarebbero stati esclusi da tali obiettivi.

Fu proprio in questo periodo che l'Unione Europea, grazie alle ambiziose misure elaborate all'interno dei suoi confini sin dai primi anni '90, iniziò ad imporsi sul piano globale come potenziale leader nella lotta al cambiamento climatico.

A fronte di quanto detto, l'indagine condotta in questa tesi si pone come obiettivo quello di analizzare la performance dell'Unione durante il lungo processo negoziale indetto a Berlino nel 1995, e terminato due anni dopo, a Kyoto, con l'adozione del Protocollo. Sulla base degli insuccessi e dei traguardi raggiunti dall'organizzazione in questo contesto, i quali sono rilevabili nel testo del Protocollo, l'indagine mira a stabilire se l'Unione ha effettivamente esercitato un ruolo di leader durante il suddetto processo negoziale oppure no.

Il concetto di leadership politica nell'ambito delle relazioni internazionali è estremamente ampio, e racchiude diversi elementi di complessità sui quali questa tesi si è soffermata in maniera approfondita. In primo luogo, è fondamentale precisare che gli stati possono esercitare la propria influenza attraverso tre tipi di leadership politica: una strutturale, una imprenditoriale e una direzionale.

La leadership di tipo strutturale, altresì definita dagli accademici come leadership coercitiva, si basa principalmente sull'influenza politica esercitata dallo stato in questione. Essa si manifesta quando lo stato (o l'individuo in rappresentanza di esso) impiega le proprie risorse, in termini di potere, per influenzare gli altri attori internazionali e raggiungere l'obiettivo prefissato beneficiando di tutti i vantaggi. Questo tipo di leadership risulta ben esemplificato dall'espressione metaforica "bastone e carota", utilizzata spesso dagli esperti per spiegare come in questo caso il leader politico ricorre a tutta una serie di promesse e/o minacce al fine di persuadere le controparti. In questo contesto, è necessario sottolineare che non sono solo le risorse economiche e materiali utilizzate dal leader ad essere fondamentali, ma bensì il modo in cui autorità e potere vengono impiegati per manipolare e distorcere gli incentivi altrui.

In virtù dei 15 stati membri che ai tempi dei negoziati di Kyoto costituivano l'Unione, rispettiva popolazione e prodotto interno lordo, gli studiosi riconobbero nell'UE un notevole potenziale di leadership strutturale. Nello specifico, quanto detto contribuisce a spiegare il motivo per il quale nella fase finale dei negoziati, durante il Summit di Kyoto del Dicembre 1997, l'attenzione mediatica e politica si focalizzò quasi esclusivamente sulle visioni contrapposte di Stati Uniti e Unione Europea, ritenuti gli attori principali del processo. Ciò nonostante, gli esperti chiarirono che

a fronte delle complessità poste dal problema del cambiamento climatico, limitarsi a considerare un' influenza di tipo strutturale sarebbe senza dubbio approssimativo, oltre al fatto che non riuscirebbe a spiegare in maniera esaustiva le dinamiche di leadership intercorse durante il processo di Kyoto.

A tal proposito, è necessario spiegare che in ambito politico, gli stati (o gli individui che lo rappresentano) possono altresì imporre la propria leadership assumendo una condotta di tipo imprenditoriale. Per questa ragione, la tesi offre anche un'analisi approfondita sulla nozione di imprenditorialità politica e il suo stretto legame con il concetto di leadership.

L'abilità fondamentale del leader in questo caso sta nella sua capacità di individuare il problema, definirlo, e proporre soluzioni per la sua risoluzione. Il leader deve essere in grado di individuare i mezzi appropriati per raggiungere degli obiettivi comuni, convincendo al tempo stesso le controparti dell'importanza del suo contributo. L'elemento centrale che contraddistingue questo tipo di leadership politica dalle altre riguarda il fatto che non è solo il leader e lo stato che rappresenta a trarre dei benefici, ma tutti gli attori parte del processo negoziale.

Gli studiosi hanno precisato che questo tipo di leadership meno "autorevole" è fondamentale in un processo negoziale. Solitamente, esso si manifesta nelle prime fasi di un negoziato, quando i governi sono più inclini a considerare un'ampia gamma di idee e misure.

Per quanto riguarda la performance dell'UE nel processo di Kyoto, gli studiosi hanno identificato diversi tipi di leader in questo senso, tra cui la Commissione UE, il Consiglio dei Ministri, e anche alcuni stati membri, come la Germania, il Regno Unito, i Paesi Bassi, e la Danimarca, pionieri della lotta al cambiamento climatico all'interno del confine. Effettivamente, subito dopo l'adozione della Convenzione quadro delle Nazioni Unite, vi sono stati diversi tentativi di leadership, non solo da parte delle istituzioni europee ma anche da parte di alcuni stati membri, incaricati a rotazione di gestire la Presidenza del Consiglio dell'UE. Molti di questi tentativi non hanno ottenuto i risultati desiderati; in altri casi invece, gli sforzi europei hanno portato a veri e propri successi riconosciuti sul piano internazionale.

Uno dei traguardi chiave della performance europea in questo contesto fu l'accordo di ripartizione degli oneri raggiunto nel Marzo del 1997, sotto la presidenza del governo Olandese, incaricato dal Gennaio al Giugno di quello stesso anno, di presiedere e coordinare le sessioni del Consiglio dell'UE. Il cosiddetto "Burden-Sharing Agreement" stabilì che l'Unione avrebbe ridotto le sue emissioni complessivamente del 9.2% entro il 2010. L'entità del target venne ripartita tra gli stati membri a seconda delle capacità e delle risorse economiche di ogni paese. Ai paesi economicamente più stabili vennero affidati obiettivi più ambiziosi, come ad esempio all'Austria, alla Danimarca e alla Germania, i quali accettarono di ridurre le proprie emissioni del 25%. Invece, ai paesi economicamente più deboli, quali Grecia, Spagna, Irlanda venne addirittura concesso di incrementare

le proprie emissioni rispettivamente del 30%, 17% e 15%. In questo modo, alcuni stati avrebbero provveduto a compensare le debolezze di altri, e nel complesso il meccanismo avrebbe permesso di ridurre notevolmente le emissioni dell'Unione. Inoltre, al fine di sviluppare la propria strategia sul piano internazionale, l'Unione propose di estendere l'accordo alle controparti del negoziato in modo tale da raggiungere una riduzione complessiva delle emissioni pari al 15%. L'Unione chiarì che gli stati parte avrebbero dovuto raggiungere il proprio target individualmente senza ricorrere ad alcun meccanismo di compensazione perché non facenti parte di un'organizzazione. Dinanzi alla proposta, in un primo momento le altre parti del processo negoziale, soprattutto gli Stati Uniti e gli altri membri della coalizione JUSSCANNZ (tra cui Giappone, Canada, Nuova Zelanda) criticarono pesantemente la strategia dell'UE dichiarando la loro preferenza verso approcci di mercato più flessibili. Tuttavia, a fronte della caparbietà dell'Unione, il meccanismo di ripartizione degli oneri venne incluso nel Protocollo.

È d'obbligo specificare che l'accordo dell'Unione (e i target contenuti in esso) furono i più ambiziosi mai proposti durante i negoziati del Protocollo. Per questo motivo, gli esperti considerano l'accordo UE per la ripartizione degli oneri come il pinnacolo della leadership europea nel processo di Kyoto. Se non fosse stato per la proposta europea, molto probabilmente i target contenuti nel Protocollo sarebbero stati più modesti. A questo proposito, è necessario evidenziare che l'Unione non esercitò solo una leadership di tipo imprenditoriale ma bensì anche di tipo direzionale, in quanto fornì agli altri negoziatori un valido e concreto esempio di come affrontare e gestire il problema del cambiamento climatico.

In termini più ampi, per leadership direzionale (anche chiamata leadership unilaterale), si intende la capacità di un attore di apportare un contributo politico, sociale, intellettuale, concreto così da convincere le parti terze a seguire ed/o emulare la linea d'azione messa in atto dal leader. In questo caso, per esercitare efficacemente la leadership è necessario dare prova di aver personalmente raggiunto l'obiettivo. Nello specifico, per quanto riguarda la leadership esercitata da un governo sul piano internazionale, questo deve prima portare a termine i propri obiettivi a livello domestico. L'elemento centrale della leadership di tipo direzionale non riguarda il prestigio del contributo apportato dal leader o il numero dei suoi sostenitori, ma bensì il volontario cambio di posizione delle controparti.

Nel complesso, l'accordo di ripartizione degli oneri fu un notevole successo per l'Unione, soprattutto a fronte del fatto che le politiche ambientali, e quindi anche quelle climatiche, sono definite dall'articolo 4 TFUE come materie di competenza concorrente. Ciò significa che in quest'ambito, sia l'UE che gli stati membri possono adottare atti giuridicamente vincolanti. A questo proposito, una delle più grandi sfide dell'Unione durante il processo negoziale di Kyoto fu proprio

quello di elaborare una linea d'azione comune che riuscisse a mettere d'accordo gli organi istituzionali europei con gli stati membri. Secondo gli esperti, in occasione dell'accordo di ripartizione degli oneri, venne attuato un processo di "scelta collettiva", attraverso il quale stati membri ed istituzioni diedero congiuntamente il loro contributo per la realizzazione dell'accordo. Tuttavia, in più occasioni, soprattutto durante l'ultimo round di negoziati tenutosi a Kyoto dall'1 al 10 Dicembre, il complesso processo decisionale dell'organizzazione e l'incapacità di trovare un accordo comune si tramutarono nel tallone d'Achille dell'Unione.

Sulla base dell'analisi teorica fornita, è necessario puntualizzare che il processo negoziale di Kyoto vide imporsi sullo scenario internazionale diversi tipi di leadership. Anzitutto perché l'arco di tempo preso in considerazione è estremamente vasto. Infatti, dalla Prima COP tenutasi a Berlino nel 1995, fino alla COP-3 di Kyoto del 1997 intercorsero, sotto gli auspici del Mandato di Berlino, ben 8 incontri ufficiali, ciascuno di essi dedicato ad affrontare un aspetto specifico del Protocollo. Nel corso di questi dibattiti, gli stati parte della Convenzione si impegnarono ad elaborare e sottoporre un'ampia gamma di propose. Gli attori chiave del processo furono indubbiamente l'UE e gli Stati Uniti, i quali affrontarono i negoziati di Kyoto con due strategie diametralmente opposte. Se l'Unione si pose fin da subito in prima linea per promuovere obiettivi lungimiranti ed ambiziosi al fine di combattere il cambiamento climatico, gli Stati Uniti si dimostrarono (per lo meno all'inizio) piuttosto ostili, e più inclini a tutelare gli interessi dei propri cittadini nonché la competitività economica del paese. Oltre al ruolo chiave giocato dagli stati, attori principali del negoziato, è necessario anche evidenziare che durante il processo vi sono stati alcuni esempi di leadership individuale. Primo tra tutti il Presidente Raul Estrada il quale, incaricato di presiedere la COP-3, esercitò un ruolo di leader esemplare. Secondo gli studiosi, il successo della COP-3 sarebbe da imputarsi in buona parte alle capacità del Presidente Estrada. Un'altra personalità di spicco del processo negoziale fu il Vice Presidente degli Stati Uniti Gore, il quale riuscì a gestire la delicata posizione del paese durante tutta la Conferenza di Kyoto.

Su questo sfondo, gli studiosi ritennero impossibile individuare un leader indiscusso nelle negoziazioni di Kyoto. Risulta invece più appropriato suddividere il processo negoziale in più fasi, al fine di esaminare ciascuna di esse singolarmente. Seguendo la prospettiva adottata dalla maggior parte degli studiosi in questo ambito, è fondamentale chiarire che la performance dell'EU alternò una serie di alti e bassi. Quando le negoziazioni volte all'adozione del Protocollo addizionale alla Convenzione ebbero inizio, l'UE tentò di affermarsi come leader in svariati modi. Nello specifico, a seguito della richiesta del Consiglio dei Ministri, la Commissione elaborò un'ampia gamma di misure (come la tassa sulle emissioni, il meccanismo di monitoraggio e alcuni programmi che miravano a promuovere fonti energetiche rinnovabili all'interno della Comunità) per riuscire ad imporsi come

leader sullo scenario internazionale. Tuttavia, a causa dei numerosi contrasti emersi tra gli stati membri e gli organi istituzionali europei, il pacchetto di strategie per combattere il cambiamento climatico venne adottato in notevole ritardo rispetto a quanto previsto. Cosa più importante, le misure contenute al suo interno subirono un consistente ridimensionamento. Nel complesso, la performance dell'UE in questa prima fase risultò abbastanza deludente e questo fece perdere credibilità all'Unione, per lo meno fino all'adozione dell'accordo sulla ripartizione degli oneri del Marzo 1997, che come già spiegato, venne definito come il più grande successo dell'organizzazione durante il processo.

Per quanto riguarda l'ultimo round di negoziati tenutosi a Kyoto nei primi giorni del Dicembre 1997, la performance europea risultò essere piuttosto deludente a fronte degli ambiziosi obiettivi prefissati dall'organizzazione. In quest'ultima fase, la delegazione europea venne sovrastata in particolar modo da quella statunitense, la quale premette fino alla fine per l'adozione di una serie di meccanismi di mercato ritenuti più flessibili, più facili da gestire e meno pericolosi per la competitività del paese.

Per comprendere a pieno i successi e le sconfitte dell'Unione nell'ambito di Kyoto, l'indagine condotta in questa tesi si è focalizzata sulle disposizioni contenute nel Protocollo. Nello specifico sono stati presi in considerazione gli articoli 2, 3 e 4, perché ritenuti i più significativi a livello di contenuto per lo scopo di questa indagine.

L'articolo 2 contiene le cosiddette "Politiche e Misure", nonché uno degli obiettivi più importanti dell'Unione fin dall'inizio del Mandato di Berlino. Se da un certo punto di vista la loro inclusione all'interno del Protocollo fu un successo per l'Unione, è necessario chiarire che queste misure non vennero adottate come vincolanti, contrariamente a quanto richiesto. In altre parole, seppur ratificando il Protocollo, le disposizioni contenute all'interno dell'Articolo 2 sono da considerarsi come strumenti integrativi per la riduzione delle emissioni.

L'articolo 3 può essere definito come il cuore del Protocollo, in quanto racchiude gli obiettivi degli stati parte del Trattato. Complessivamente, gli stati si impegnarono a ridurre le proprie emissioni del 5% rispetto ai livelli del 1990 tra il 2008 e il 2012. La quota percentuale venne divisa in base alla ricchezza relativa di ciascun paese. L'Unione stabilì una riduzione piuttosto ambiziosa dell'8%, mentre gli Stati Uniti ottennero una riduzione del 7% e il Giappone del 6%. A fronte di queste riduzioni, ad alcuni stati venne concesso il diritto di aumentare le proprie emissioni, come ad esempio all'Australia (+8%) o all'Islanda (+10%).

Secondo gli esperti, l'Articolo 3 stabilì un equilibrio tra l'approccio rigoroso dell'UE e quello flessibile degli Stati Uniti. Infatti, l'Unione riuscì nell'intento di far adottare degli obiettivi vincolanti all'interno del Protocollo ma dovette accettare che questi subissero delle differenziazioni a seconda del paese.

L'Articolo 4 strettamente correlato all'Articolo 3, regola l'adempimento congiunto degli impegni del Protocollo. Questa disposizione è da considerarsi una grande vittoria dell'Unione, in quanto gli riconobbe la possibilità di ripartire liberamente il proprio target tra gli stati membri, facendo riferimento all'accordo di ripartizione degli oneri elaborato nel Marzo del 1997, la cosiddetta "Bolla Europea" e poi rinegoziato in seguito all'adozione del Protocollo.

Per quanto riguarda il resto delle disposizioni contenute nel Protocollo, l'Unione fallì nell'imporre la sua influenza. Tra i più significativi vi sono l'articolo 6, che disciplina il trasferimento e l'acquisto di unità di riduzione delle emissioni (Join Implementation), l'articolo 12 che regola il cosiddetto Meccanismo di Sviluppo Pulito (Clean Development Mechanism), e l'articolo 17 che disciplina il commercio delle emissioni (Emissions Trading System). Nel complesso, si tratta di meccanismi di mercato flessibili, richiesti fin dall'inizio del processo negoziale specialmente dagli Stati Uniti e dagli altri stati parte della coalizione JUSSCANNZ. Malgrado il notevole scetticismo nei confronti di questo tipo di meccanismi, l'Unione dovette accettare la loro inclusione nel Protocollo. In questo caso, si trattò di una chiara vittoria degli Stati Uniti e del loro approccio flessibile sulla rigida ed ambiziosa condotta dell'Unione.

Per i motivi sopraelencati, gli esperti giudicarono il Protocollo di Kyoto come un compromesso tra le parti. In sostanza, non sarebbe possibile indentificare un solo leader nel processo negoziale. Piuttosto, il ruolo di leader venne esercitato da più attori a seconda del tipo di disposizione presa in considerazione. Per quanto riguarda gli ambiziosi target contenuti all'interno del Protocollo, la loro inclusione è certamente da attribuirsi all'Unione. In questo ambito, l'UE svolse un ruolo di leader sia imprenditoriale che direzionale. Se si considerano l'ampia gamma di meccanismi flessibili inclusi nel Protocollo, si potrebbe invece concludere che furono gli Stati Uniti ad esercitare un ruolo di leader. Alcuni esperti descrissero il Protocollo come una vittoria per tutte le parti del negoziato. Infatti, l'UE riuscì a far adottare la propria proposta riguardo ai target e al meccanismo di ripartizione degli oneri, gli Stati Uniti ottennero l'inclusione dei meccanismi flessibili di mercato, gli altri stati come ad esempio i membri del gruppo JUSSCANNZ, ottennero una differenziazione dei propri oneri in base alla situazione economica di ciascun paese, e gli stati in via di sviluppo, come da loro richiesto, non vennero coinvolti con obiettivi vincolanti.

Introduction

The negative impacts of climate change on our planet have become quite evident in this day and age. Indeed, global warming turned out to be one of the main direct consequences of climate change. However, its impacts extend well beyond a mere increase in temperature. Precipitation patterns are changing, the frequency and duration of North Atlantic hurricanes are intensifying, global sea level is rising, arctic ice is melting, not to mention the continuous heat waves, floods, and droughts, that nowadays governments and citizens around the world are called to tackle on a daily basis. Climate change has brought its negative effects in a great variety of fields: water, energy, agriculture, the overall global economy; ultimately our ecosystems and human health.

Over the last century, the correlation between these extreme weather events and human industrial activities has been widely underestimated by the international community, at least until the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988. Since the end of the 1980s, the IPCC started to provide governments with regular scientific assessments on the effects of climate change. Overall, the numerous reports released by the Intergovernmental Panel confirmed the correlation between the emissions of greenhouse gases and climate changes. Most importantly, they were calling for international cooperation so as to mitigate climate change effects. Notably, the First IPCC Assessment Report (FAR) released in June 1990 proved to be of utmost importance in this framework, as it was crucial for the adoption of the United Framework Convention on Climate Change (UNFCCC), the key international treaty that laid the basis for reducing global warming and coping with the climate change problem.

In light of the above, it can be argued that since the 1990s the climate change issue firmly positioned on both the international and the European agenda, becoming one of the most hotly debated issue of the decade. In this respect, it is worth stressing that the international and European climate policy evolved in tandem, feeding back on each other.

Overall, the climate change legislation started to take shape in occasion of the negotiation, adoption, and entry into force of the 1992 Framework Convention. The ultimate objective of the FCCC was to stabilize greenhouse concentrations "at a level that would prevent dangerous anthropogenic interference with the climate system"[1]. Indeed, Article 2 provided the international community with the basic values and scientific orientation to deal with the climate change challenge. Notwithstanding, the Convention did not establish any concrete binding commitment for individual

[1] Article 2 UNFCCC.

parties. This is the reason why, in occasion of the First Conference of the Parties (COP 1) held in Berlin in 1995, the international community concluded that the goals previously set by the Framework Convention were not adequate to meet the climate change challenge. Accordingly, UNFCCC parties decided to set up an international negotiation process that could lead to the establishment of an appropriate set of climate policy measures to be implemented beyond 2000 in the form "of a Protocol or another legal instrument"[2]. Hence, COP-1 participants established the so-called Berlin Mandate, which was meant to be conducted by an ad hoc group of Parties, a special negotiating body labelled as the "Ad hoc Group on the Berlin Mandate" (AGBM). The Berlin Mandate laid the basis for the adoption of the 1997 Kyoto Protocol, the first environmental international agreement containing mandatory greenhouse-gas emissions reduction targets for the parties.

Starting from this background, one of the first questions raised in this thesis regards the contribution given by the Union in the evolution of the Kyoto process. Would it be possible to look at the EU as one of the main protagonists of the process? If so, was the content of the Protocol's provisions somewhat influenced by the Union?

On the whole, academics and observers unanimously agreed on considering the European Union as one of the most fervent actors of the negotiating process leading to Kyoto. Most importantly, due to its great involvement in the issue and the ambitious measures proposed by the organization at both the European and international level since the Framework Convention was adopted, some observers began to look at the Union as a potential leader in the fight against climate change.

In light of these considerations, the investigation conducted in this thesis aims at evaluating the leadership role played by the Union in the Kyoto framework. Additionally, apart from examining its leadership role, this study will deepen its scope by trying to evaluate which kind of political leadership did the Union exert.

The investigation focuses on the period going from the beginning of the 1990s, until the end of the Third Conference of the Parties (COP-3) that took place in Kyoto in first ten days of December 1997. Notwithstanding, in order to lay the basis of this investigation, it has been necessary to delve into the Union's origins, and investigate over the institutional developments that brought to the consolidation of the organization. Similarly, it has also been necessary to investigate over the EU environmental policy's origins, for they are strictly related to EU climate change policy origins. These are the reasons why the investigation starts by the year in which the Community was established to then narrow its focus on the 1990 decade.

In order to be able to effectively analyze the role played by the European Union during the Kyoto process, a meticulous and in-depth investigation has been carried out. Accordingly, the

[2] FCCC/CP/1995/7/Add. 1.

reference list comprises a great variety of primary and secondary sources. The primary sources include a wide range of official documents issued by the EU and the United Nations, as well as the most relevant international treaties and European agreements concerning the climate change issue. Conversely, the secondary sources comprise a great variety of academics' contributions which have been extrapolated from books, scientific articles, reports, working papers, organizations' websites and others.

This thesis has been divided into four chapters, even though from a theoretical and conceptual point of view, it may only be split in two main parts. The former, namely the first and second chapter, represents the theoretical framework of the investigation. In this sense, not only are these chapters the starting point of the analysis - for they provide the reader with some introductory information about the topic - but they also offer some valuable points of reflection in view of the analysis conducted in the following chapters, the core of this investigation. Conversely, the latter part of this thesis (the third and fourth chapters) represents the crucial part of the work, as it answers the main question asked in this thesis: Did the Union succeed in exerting a leadership role in the Kyoto process?

To sum up, this thesis has been structured as it follows:

The first chapter will provide some introductory information on the European Union and its history, and will shed light on the watershed moments that contributed to its consolidation on the international panorama as one of the most ambitious experiments of regional organization. Afterwards, the chapter will illustrate the main EU's institutional actors, and will provide some theoretical insight into the notion of entrepreneurship so as to understand how EU's actors interacted among themselves to impose the Union as a leader in the run up to Kyoto. The final part of the chapter will be dedicated to illustrate the history of both EU environmental and climate change policy, their origins and developments.

The second chapter will serve to give further support to the theoretical framework in part developed in the first chapter. Notably, it will expand its focus to the other key players of the Kyoto process. Starting from a theoretical insight on multilateral negotiations' dynamics, the chapter will illustrate the main coalitions emerged in the Kyoto framework so as to contrast the European influence. The final part of the chapter will move its focus back to the EU as a whole, so as to address a host of aspects regarding its influence on the international scenario as far as the climate change issue is concerned. Notably, the last paragraphs will focus on the degree of actorness possessed by the Union, for according to academics, it is a key precondition to impose leadership over other sovereign states. Likewise, being the Union a regional organization comprising 15 members at the time of Kyoto negotiations, the last section will provide some considerations about the EU conceived as collection of states as well as a cohesive coalition.

The third chapter will comprehensively deal with the notion of political leadership by following (as suggested by academics) three different types of dimensions: the structural, the entrepreneurial, and the directional. Against this backdrop, the chapter will evaluate the leadership performance of the EU during the period going from COP-I, which took place in Berlin in 1995, to the last negotiation round preceding the Kyoto conference, namely the last session of the Berlin process, which took place in Bonn in October 1997.

The fourth chapter will be entirely dedicated to the Kyoto Conference, which was held from the 1st to the 10th December 1997. In this context, the analysis will briefly outline the most significant moments of the Protocol's negotiation process, paying particular attention to the contribution given by the EU in this framework. Accordingly, the chapter will provide an overview of the Protocol's design as well as its key aspects. Notably, much emphasis will be given to Articles 2, 3, and 4, as apart from regulating some of the most controversial issues of the Protocol, they are crucial to examine the role played by the EU in COP-3. The chapter will conclude with a host of considerations with regard to the leadership role of the EU in contrast to the other main international actors.

Finally, the conclusion will sum up the most salient outcomes of the analysis conducted in the four chapters, since each of them has attempted to shed light on a specific aspect of the topic addressed in this thesis. The section will conclude with a brief summary of the most relevant moments of the EU leadership performance, eventually providing the answer to the main question raised in this thesis.

Chapter 1. The European Union and its climate change policy roots.

Index: 1.1 The European Union emergence on the international scenario. - 1.2 Policy-making and entrepreneurship. - 1.3 The institutional actors involved in the European policy-making process. - 1.4 Environmental and Climate Change Policy. - 1.5. The early stages of EU climate policy.

This chapter represents the theoretical background of the investigation. Accordingly, it provides introductory information on the EU, shedding light on the watershed moments that contributed to the consolidation of the Union as a regional organization (Section 1.1). It then follows by presenting some theoretical insights into the notions of entrepreneur and entrepreneurship, for they are closely related to the leadership concept (Section 1.2). Afterwards, it sheds light on the variety of actors that, especially since the 1990s, has contributed to the consolidation of a European climate change policy (Section 1.3). To conclude, the chapter summarizes the first measures implemented by the Union to deal with the climate change problem within its borders (Section 1.4).

The analysis carried out in this chapter suggests that since the first half of the 1990's decade, the EU demonstrated its willingness to establish ambitious and far-reaching objectives to pursue policy change in the climate change field. Despite this, the numerous frictions among member states as well as the contrasts between the Commission and the Council prevented the organization from achieving concrete results.

1.1 The European Union emergence on the international scenario.

The European Union (EU[3]) is nowadays considered the most legally and politically authoritative international organization worldwide. There is widespread acceptance among legal scholars on the fact that the current EU internal institutional design is the result of a complex combination of legal, economic, political, social, cultural, and security interests, in which the core European governing institutions have played a role of utmost importance along the decades[4].

[3] During this study, the acronym "EU" will be often employed for simplicity reasons so as to refer to the organization as a whole, although it is fundamental to stress that its nomenclature has been subjected to various amendments along the decades. Yet, between 1993 and 2009, (notably the period this study focuses on) the Union comprised three pillars, which were eventually abandoned with the entry into force of the Treaty of Lisbon in 2009.

[4] Selin, H. and VanDeveer, D.S. (2015) "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources*, Vol. 40, p. 309.

The EU traces its origins back to the 1951 Treaty of Paris[5], which established the European Coal and Steel Community (ECSC). Some years later, in 1957, the Treaty of Rome[6] brought about the creation of the so-called European Economic Community (EEC). Likewise, the Euratom Treaty established the European Atomic Energy Community[7].

In the beginning, the sole organization's aim was that of fostering economic cooperation among the original six members[8]. Notwithstanding, since that moment membership started to grow, and newer states gradually joined the Community. In the meantime, through the adoption of its key treaties and subsequent revisions[9], the EEC's legal basis started to consolidate as well, and what began as a purely economic community evolved into an organization whom horizons in this day and age embrace a wide range of different policy domains, spanning across justice, security, external relations, public health, migration, environmental issues, and so forth[10].

In this respect, it is worth stressing that the European enlargement itself was pursued through a deep integration process across different policy areas. Especially during the second half of the 1990s, the formal political, economic, and legal criteria needed to apply for European membership, entailed a set of requirements as a stable democratic institution based on the rule of protecting human rights, a market economy, and the adoption of all EU legislation.

In addition to the creation of a single market, one of the original core objectives of the EEC, the gradual concern within the Community for the environment grew as well. Going back to the time when Denmark, Ireland and the United Kingdom first entered the Union in 1973, environmental issues did not use to occupy any relevant position. The membership expansion of the 1980's[11] marked the beginning of a series of contrasts and contentious negotiations within the Community between northern and newer southern countries. Yet, on the road leading up to the first major revision of the

[5] The declaration made by Robert Schuman on 9 May 1950 deserves a special mention. The French foreign minister proposed the creation of a European Coal and Steel Community as according to him: "The pooling of coal and steel production…will change the destinies of those regions which have long been devoted to the manufacture of munitions of way, of which they have been the most constant victims". Available at: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en. Last visit on 10.06.19.

[6] Its original full name was "Treaty on the Functioning of the European Union" (TFEU), whose name has been amended by successive treaties significantly changing its content. Alongside the Treaty of Maastricht, the Rome Treaty laid the constitutional basis of the European Union.

[7] The original aim of the European Atomic Energy Community (EAEC) was that of developing nuclear energy and distributing it among EU members, while selling the surplus outside its borders.

[8] Belgium, France, West Germany, Italy, Luxembourg and the Netherlands became known as the "Inner Six" countries, founders of the EEC. Currently, the EU is composed by 28 countries. With regard to the UK, the country is still considered a full member of the EU. As a result, both rights and obligations keep being fully applied in and to the UK. See https://europa.eu/european-union/about-eu/countries_en. Last visit on 12.05.19.

[9] With the entry into force of the Lisbon Treaty (1st December 2009), the two treaties forming the constitutional basis of the organization, namely the Treaty of Rome (1957) and the Maastricht Treaty (1993), were amended.

[10] The European sphere of action is extremely wide. Yet, it counts around 35 different policy areas of competence. See: https://publications.europa.eu/en/publication-detail/-/publication/715cfcc8-fa70-11e7-b8f5-01aa75ed71a1/language-en.

[11] Greece joined the Union in 1981, while Portugal and Spain in 1986.

Rome Treaty[12], northern member states (namely Denmark, Germany, and the Netherlands) started to claim for a single market with high environmental and human health targets. Southern states on the other hand, including the most recent ones, were much concerned about promoting economic growth through increased investments and by improving the trade sphere. Eventually, when in 1995 Austria, Sweden, and Finland joined the organization, the political balance definitely shifted towards a more ambitious environmental policy-making tendency. Green leader states began to cooperate with the main EU core bodies in order to raise the Community environmental standards. On the contrary, the so-called "laggards"[13] states demonstrated to be rather sceptical on the adoption of such environmental high standards, considering the implementation of the measures proposed too expensive for them.

As further demonstrated during the course of this study, states' behaviour has always been driven by a host of interests. In this respect, it needs to be taken into account that tackling delicate issues such as those pertaining to the environment sphere also means responding to domestic political opinion, protecting domestic industries from stringent mandates, and making it easier for firms to comply with them. Therefore, reaching a common line of action from which gaining benefits at all levels is extremely challenging. For this reason, several scholars expressed fears regarding the inclusion in the organization of members with lower economic and ecological standards along the decades, as they might have slowed or even weakened the EU environmental policy making framework[14]. However, as highlighted by Selin and VanDeever[15], "such worries were largely unfounded". Indeed, newer countries did not aggregate into one uniform block within the Council of Ministers, but they rather worked alongside the various coalitions around particular environmental issues.

Overall, it may be observed that the Community consolidation and its subsequent enlargements brought deep frictions among member states. Nonetheless, such enlargements proved to be quite useful, even though extremely challenging, to raise environmental standards significantly both within newer member states' borders and at the community level.

In this context, the most peculiar organizational feature regarding the *modus operandi* of the Union has to be pointed out, mainly due to the fact that it made the organization absolutely unique at the international level. Although after the establishment of the Community all member states kept

[12] That occurred in 1986, with the Single European Act.

[13] In the context of climate change, the term has been frequently used by legal scholars to refer to that set of countries which struggled to implement substantial policy change at the national level. See Andresen, S. and Agrawala, S. (2002), Karlsson, C. et al., (2011), Selin, H. and VanDeveer, D.S. (2015).

[14] Especially those pertaining to the central and Eastern European area, which entered the Union in 2004.

[15] Selin, H. and VanDeveer, D.S. (2015) "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources*, Vol. 40, p. 323.

remaining sovereign and independent, part of their decision-making power[16] (where cooperation among states appeared beneficial) was officially pooled to the shared European institutions. Indeed, several policy domains ended up being deeply affected by the so-called principle of subsidiarity[17], for they have been constantly subjected to multiple pressures from both national and international levels[18].

After decades of frictions between member states and EU institutions, the Treaty of Lisbon provided for the first time a clear classification of all state members competences, dividing them into three main categories: exclusive competences[19], shared competences[20], and supporting competences[21]. Actually, the Treaty did not result in any notable transfer of competence, but the reform proved to be extremely useful for the proper functioning of the EU, marking definitely the boundaries between the Union and the member states sphere of competence. As officially recognized by article 4 of the consolidated TFEU[22], the environmental field is subjected to the shared competence of the EU and its member states. Accordingly, the same goes for climate change policy.

There is wide acceptance among legal scholars on the fact that the "shared competence" mechanism has contributed to undermine the attempts for the development a comprehensive environmental policy framework since the very beginning. Even though member states do share a common democratic foundation as well as a comparable legal system, they differ in economic welfare, language, and cultural inclinations. Furthermore, it has to be taken into account that European countries are affected by different kinds of environmental issues, and so the policy framework developed at the national level to deal with climate change problems also varies according to their geographical position[23]. Consequently, policy integration and substantial implementation across member states proved to be quite challenging since the EU started to design a common climate change policy.

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[16] To begin with, when the Treaty of Paris was signed in 1951, the Inner six accepted to pool their coal and steel resources as well as the powers concerning their exploitation.

[17] The principle of subsidiarity is defined in Article 5 of the Treaty on European Union (TEU). The article established that member states are obliged to foster and enforce EU objectives that do no fall into the internal competence sphere. Therefore, member states are required to take constant and positive steps for the achievement of EU's international objectives.

[18] Numerous critics of European Integration talked about a "Democratic deficit" of the EU, to indicate the growing cynicism with which EU citizens view both their own governments and the organization.

[19] Article 3 TFEU established the exclusive competence of the EU in: customs union, monetary policy, common commercial policy, conclusion of international agreements under certain conditions.

[20] Article 4 TFEU defines the environment as well as the energy and transport fields, as areas of shared competences between state members and the EU.

[21] Article 6 of the TFEU refers to the following areas: protection and improvement of human health, industry, culture, tourism, education, civil protection and administrative cooperation.

[22] The consolidated version of the Treaty on the Functioning of the European Union, originated as the Treaty establishing the European Economic Community, was signed on 13 December 2007.

[23] In this respect, the European Environmental Agency (EEA) provides comprehensive data and analysis about the consequences of climate change in the European region.

As claimed by Lenschow[24] and other legal scholars during this study, environmental policy can be described as an "horizontal policy", since its sphere affects a host of economic sectors ranging from energy to transportation. Therefore, it also requires a deep coordination effort among diverse DG departments[25] within the European Commission. As acknowledged by Krämer and others[26], EU environmental policy can be considered one of the policy areas where the EU had achieved incontestable success[27]. In this sense, it is fundamental stressing that along the decades the organization aimed at delineating a common environmental foreign policy[28]. Actually, the provisions for a Common Foreign and Security Policy took shape in 1997 with the Amsterdam Treaty. However, as it will be explained more in details, since the early 1970s, the Community managed to become part of most international environmental agreements by taking advantage from the Treaty establishing the so-called European (Economic) Community.

On the whole, it can be assumed that environmental policy within the European borders owes its consolidation to two main factors. In the first place, it has to be noted that the dramatic spread of environmental issues made this field a priority, not only for the EU, but also for the whole of the international community. Most importantly, the second factor regards the dramatic involvement of a wide range of actors within the European environmental policy making process. Not only did the process involve the EU institutions, but also a host of non-state actors, as for instance advocacy groups as well as NGOs. Due to the efforts made by these categories in the environmental field, they deserve to be examined more closely. However, before providing a comprehensive description of the variety of actors involved in the process of EU environmental policy making, the following section sheds light on some key concepts of policy scholarship.

1.2 Policy-making and entrepreneurship.

As depicted by Cairney in his analysis[29], the perfect world would be constituted by predictable actors, who would simply and transparently engage with policy makers in order to consolidate policy change processes. Likewise, actors would combine their beliefs and values with evidence so as to evaluate

[24] Lenschow, A. (2010), "Environmental Policy: Contending Dynamics of Policy Change", in Wallace, H, Pollack, M.A, and Young, A.R, *Policy-Making in the European Union*, 6th ed. Oxford: Oxford University Press, p. 312.
[25] The Directorates-General are policy departments used to support the Commission's work.
[26] Krämer (1995), Johnson and Corcelle (1995) as cited in Dahl, A., (2000), "Competence and subsidiarity: Legal basis and political realities", in Gupta, J. and Grubb, M.J., *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 206.
[27] Scholars refer to the period going from the early stages of environmental legislation until the first half of the 1990s.
[28] A common foreign policy entails common policy stances as well as a common strategy to be used in external relations with third parties.
[29] Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol 46, No 2, pp 200-201.

problems, possible and feasible solutions would be provided, and policy makers would choose the most adequate solutions so as to solve problems. Cairney imagined a type of world in which policy-cycles are being developed by "comprehensive rationality"[30]. Remarkably, by using this prototype of reality, the author observed how the real world is much more complex and policy making often seems counterintuitive.

Indeed, due to the high amount of information provided, policy makers commonly rely on emotions, personal beliefs, gut instinct, and moral reasoning to perceive policy problems, therefore demonstrating that both rational and irrational thinking play a fundamental role in policy making processes. Moreover, the author observed that policy makers can only pay attention to a limited number of issues, which in most cases are those they mostly care about, or are familiar with[31].

There is a rich and well developed literature that sought investigating how particular policy ideas manage to take shape initiating a process of policy change. During the past decades, the concept of "entrepreneurship" gained much more centrality in the policy field, and started to be theorized and explored empirically by academics from different angles.

Roberts and King[32] defined "the process of introducing innovation into the public sector, [through] the generation, translation, and implementation of new ideas" as "public entrepreneurship". Likewise, Mintrom and Norman[33] employed the expression "policy entrepreneurship" in their analysis to explain the way in which policy change processes take place.

Although scholars used different connotations to define the process here described, it is worth stressing that no policy initiative or political activity can be initiated without the active involvement of entrepreneurial actors. In this sense, there is a wide acceptance among policy scholars on the fact that advocates of policy change achieve success due to a high degree of entrepreneurial flare. Notably, this way of behaving recalls with no doubt the typical attitude of business entrepreneurs. According to Mintrom and Norman[34], by observing advocates' practices it is possible to comprehend how entrepreneurs play a key role in the processes of policy consolidation.

Alongside the notion of entrepreneurship, the term "entrepreneur", its implications, and boundaries have been highly debated along the decades as well. Academic disciplines that span across economics, political science, sociology, business and public administration, have actively contributed to conceive how entrepreneurs organize their efforts to solve collective problems, thus fostering

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[30] *Ibidem.*
[31] *Ibidem*.
[32] Roberts, N.C. and King, P.J., (1991), 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process', *Journal of Public Administration Research and Theory,* Volume 1, No. 2, p. 147.
[33] Mintrom, M., & Norman, P. (2009, "Policy Entrepreneurship and Policy Change", *Policy Studies Journal,* Vol. 37, No. 4.
[34] *Ivi,* p. 649.

policy change. Indeed, any entrepreneur definition provided in modern times, even those applied to the policy change field, traces back to the work of Joseph Schumpeter.

During the 1950s, the political economist argued that "the function of the entrepreneur is innovation – the novel recombination of existing factors of production or the introduction of a new production function"[35]. Notably, the Schumpeter's definition was mainly based on the combination of the factors of production, thus it regarded dynamics exclusively related to the market field. Nonetheless, from that moment on, legal scholars began to use Schumpeter's contribution to explain how innovators' attitude proves to be essential in the order to generate ideas as well[36].

According to Kingdom[37], one of the highest cited authors in policy studies, the defining characteristic of entrepreneurs, both in the business and policy field, "is their willingness to invest their resources – time, energy, reputation, and sometimes money – in the hope of a future return". Most importantly, entrepreneurs must have the ability to combine their skills - talent, knowledge, tenacity - in order to exploit key opportunities[38]. Remarkably, Mintrom and Norman[39] observed that policy entrepreneurs distinguish themselves from entrepreneurs in the business field due to their strong desire to make a significant change in the way things are usually done. Furthermore, with regard to policy entrepreneurs, the authors argued that they emerge within the so-called policy community, a wide arena composed of specialists (researches, academics, interest group analysts) who, despite being scattered both through and outside the government, are commonly concerned with one area of policy problems.

Kingdom highlighted that advocates of policy change do not necessarily occupy the same position in elected or appointed positions within the policy community. Yet, they can also be found outside the government, working in research organizations or within interest groups. It is against this backdrop that ideas, proposals as well as research take form gradually, coming simultaneously into contact in the so-called Policy Primeval Soup[40].

Roberts and King's contribution[41] is extremely useful in this context, as they elaborated a sort

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[35] Schumpeter (1939), as cited in Schneider, M., Teske, P. & Mintrom, M. (1995), *Public entrepreneurs: Agents for change in American government*. Princeton, NJ: Princeton University Press, p. 7.
[36] *Ibidem.*
[37] Kingdon, J.W. (1984), *Agendas, alternatives, and public policies*. Boston: Little Brown and Company, pp 129. The author provides here a comprehensive explanation of the so-called multiple streams approach (MSA).
[38] Kingdon (1934), as cited in Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol. 46, No. 2, p. 201.
[39] Mintrom, M., & Norman, P. (2009), "Policy Entrepreneurship and Policy Change", *Policy Studies Journal,* Vol. 37, No. 4, p. 650.
[40] Kingdom (1984), pp 122-123. The term "primeval soup" was first used by biologists to describe how molecules float around before life blossom. Likewise, Kingdom compared the so-called primeval soup to a policy community, where ideas first float and then eventually take shape.
[41] Roberts, N.C. and King, P. J., (1991), 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process', *Journal of Public Administration Research and Theory*, Vol. 1, No. 2, p. 152.

of classification in order to label the host of entrepreneurs that may get involved in the policy making process. In this sense, the position covered as well as their behavioural patterns are extremely relevant. To begin with, Roberts and King defined "policy entrepreneurs" those actors who work from outside the official governmental system, whose objective is to introduce, translate and implement fresh ideas into the public sector. Instead, "political entrepreneurs" are those who hold elected leadership positions in governments.

Additionally, Roberts and King distinguished the so-called "executive entrepreneurs" – holders of appointed leadership positions within the government – from the so-called "bureaucratic entrepreneurs", who hold formal positions in the government but no leadership.

Apart from the existence of a wide range of entrepreneurs acknowledged by academics, it is worth pointing out that advocacy for policy change can be prompted by a host of incentives. The most basic one regards the promotion of personal interests. At the governmental level, it may concern the protection of bureaucratic turf – safeguarding job positions, expanding someone's sphere of action, promoting professional careers. Similarly, advocacy proposals are often prompted by interest groups (namely lobbyist) which, in order to gain benefits, exert a significant degree of influence in policy shaping processes. Indeed, changes do not take place only because of personal interests. Sometimes, a well-established ideology can become the driving force for the beginning of a great and drastic change. Alternatively, policy proposals can be also carried out to pursue personal beliefs and values. Remarkably, another type of incentive has to be taken into account as well. That is, the simple pleasure deriving from participation, being part of the action. Kingdom defined entrepreneurs following this type of incentive as "policy groupies". As citizens became involved in public campaign for solidarity, something similar happens to policy entrepreneurs, who "simply like the game", and enjoy taking part to it[42].

Overall, despite the diverse motivations that drive policy entrepreneurs towards their goals, it can be noted that these individuals seem specialized in intercepting problems and providing solutions. As noted by Roberts and King[43], policy entrepreneurs make proposals, and provide ideas as well as technical support for finding solutions. Notwithstanding, in order to "move their ideas and preferred solutions from "incubation" to enactment, they need allies; they need politicians"[44]. In this sense, entrepreneurs and policy makers form what Roberts and King described a "symbiotic relationship". Within this exchange relationship, the former are concerned with receiving approval for the ideas

[42] Kingdon (1934) as cited in Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol. 46, No. 2, p. 130.
[43] Roberts, N. C. and King, P. J., (1991), 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process', *Journal of Public Administration Research and Theory*, Vol. 1, No. 2, p. 148.
[44] *Ibidem.*

suggested, while the latter tend to adopt a more protective position, due to the fact that problems and their outcomes are going to be inevitably linked to politicians in charge at that moment.

Following the line of reasoning provided so far, it appears evident that the activity of policy-making is extremely challenging. Before its implementation, the process is subjected to a multiplicity of pressures. According to Kingdom[45], public policy making can be conceived as a combination of different processes, which entails: 1) the setting of the agenda, 2) the identification of a host of alternatives among which a choice has to be made, 3) the authoritative and final decision based on previous proposals, 4) the final implementation of the decision made.

It is worth stressing that policy entrepreneurs play a crucial role in the agenda-setting process as well as in the phase of alternative specification. Although the term "agenda" may acquire different meanings according to the context in which it is used, in the policy change field it can be defined as the list of subjects to which governmental officials pay particular attention. Instead, the identification of alternatives regards a range of similar proposal characterized by their feasibility, and that consequently have the possibility to be taken into account.

According to Kingdom, both processes (setting the agenda, and possible alternatives) are inevitably affected by three key dynamics: problem *definition*, policy *solution*, and politics (*motive and opportunity*)[46]. The main problem in this case is that it becomes extremely difficult to join together these three streams, due to the fact that they typically come separately. Therefore, everything depends on the appearance of the right entrepreneur, who has to play the role of "coupler" to connect all the elements of a very complex policy making process[47]. In order to succeed, entrepreneurs must present problems in a way to generate attention, have a brilliant solution at their disposal, and at the same time, exploit or even create by themselves opportunities to act.

Mintrom and Norman[48] observed that usually a successful entrepreneurial activity is characterized by four main elements. In the first place, entrepreneurs must possess *social acuity*, which entails the ability to recognize opportunities right before their emergence, and manage to use them so as to pursue desired outcomes.

In this framework, the "window of opportunity" concept elaborated by Kingdom[49] is worth of notice. Kingdom described policy windows as opportunities for action on given initiatives.

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[45] Kingdon, J.W. (1984), *Agendas, alternatives, and public policies*. Boston Little Brown and Company. The author provides here a comprehensive explanation of the so-called multiple streams approach (MSA), p. 3.
[46] As explained in Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol. 46, No. 2, p. 202.
[47] Roberts, N.C. and King, P.J. (1991), 'Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process', *Journal of Public Administration Research and Theory*, Vol. 1, No. 2, p. 148.
[48] Mintrom, M., & Norman, P. (2009), "Policy Entrepreneurship and Policy Change", *Policy Studies Journal*, Vol. 37, No 4, pp 652-654.
[49] Kingdon, J.W. (1984), *Agendas, alternatives, and public policies*. Boston: Little Brown and Company. pp 174-175.

However, they are only temporary, and do not stay open long, therefore policy entrepreneurs must be able to take advantage from them with rapidity. At this particular stage, policy entrepreneurs must be capable of understanding others ideas, motives and concerns, as well as engaging in policy conversations by making a good use of policy networks.

Once identified the right moment for action, entrepreneurs must also pay attention to the way in which problems are being described and presented. Knaggård[50] described the entrepreneur during this phase as a "problem broker", - whose influence is crucial in the understanding of the policy problem - and as a "knowledge broker", since an appropriate background has to be provided to fully understand the issue. In this context, Cairney also stressed the importance of telling persuasive stories able to combine facts with personal values in order to generate emotions[51].

Another factor that defines the success of the entrepreneur's activity according to Mintrom and Norman[52] regards the definition of the problem. *Defining problems* represents a real political act, which all policy entrepreneurs are called to deal with along the path that leads to policy change. Indeed, problem definition affects the way in which people relate specific problems to their own interests. Therefore, policy entrepreneurs must be extremely careful when formulating them. In this context, it has to be stressed that the simple act of problem definition and the consequent development of forward-looking ideas is not enough to guarantee a process of change. Rather, ideas become stronger when they are supported by a wider group of advocates. For this reason, Mintrom and Normal claimed that *team-building activities* of policy entrepreneurs are of utmost importance, since they allow for individual confrontation with different knowledge and skills. Indeed, developing and working in coalitions is fundamental in order to promote policy change. In some cases, the size of the coalition itself may even become a powerful tool for demonstrating the degree of support a proposal for policy change has received.

One of the hardest challenges policy entrepreneurs have to tackle is the aversion for risk that characterizes decision makers. For this reason, it is indispensable for actors seeking to promote policy change to provide working models able to demonstrate the effectiveness and practicality of the proposed change. *Leading by example* is extremely useful not only to reduce the perception of risk among decision makers, but also to provide signal of entrepreneurs' genuine commitment.

Overall, legal scholars[53] argued that policy entrepreneurs who possess and put into practice the skills and strategies aforementioned are more likely to achieve their goals.

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[50] Knaggård (2015), as cited in Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol. 46, No. 2, p. 203.
[51] Cairney, P. (2018) "Three habits of successful policy entrepreneurs", *Policy and Politics*, Vol 46, No 2, p. 201.
[52] Mintrom, M., & Norman, P. (2009), "Policy Entrepreneurship and Policy Change", *Policy Studies Journal*, Vol. 37, No. 4, p. 652.
[53] *Ibidem*.

The academics' contributions provided so far with regard to policy making dynamics are extremely relevant as they help to shed light on the main characteristics that entrepreneurs must possess in order to foster and implement policy change. Notably, as regards the European efforts in the field of climate change, academics found a strict correlation between the entrepreneurial attitude of EU policy-makers, and the overall leadership performance of the Union during the Kyoto era[54]. For this reason, this correlation will be comprehensively tackled forward.

1.3 The institutional actors involved in the European policy-making process.

As introduced, policy-making evolution and implementation in the environmental field has been the result of the active involvement and cooperation among four main EU bodies[55]: the European Commission (the Commission), the Council of the European Union (the Council of Ministers or simply the Council), the European Parliament (the EP), and the European Court of Justice (ECJ).

In the first place, it has to be highlighted that at least during the 1970s and 1980s, many environmental laws were adopted arbitrarily according to the political and economic context rather than as a result of a systematic strategy for a greener community[56]. Nonetheless, since that moment EU bodies alongside member states and advocacy groups combined their efforts with the aim of harmonizing environmental and human health standards.

As newer states entered the organization, the role of the Commission started to grow. Nowadays, it is steered by a group of 28 Commissioners, known as "The College". Since the 1980's, the Commission became a major actor in political debates and legislative processes on environmental issues. The College of Commissioners entails a five-year mandate, and it is chaired by a President. Additionally, it includes one First Vice President, the High Representative of the Union for Foreign Affairs and Security Policy, and five Vice Presidents supervising issue areas. Most importantly, the Commission is organized into policy departments, known as Directorates-General (DGs). Each Commissioner is in charge of different policy areas. Even though the DG Environment was set up relatively early in 1973, it remained a rather weak DG with respect to the others for several years[57]. Furthermore, giving its "horizontal" policy nature[58], the relationship with the other DGs had been

[54] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, pp 19-46.
[55] Article 13 of the 2007 Treaty on the Functioning of the European Union, established the institutional framework of the UE.
[56] Selin, H. and VanDeveer, D.S. (2015) "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources*, Vol. 40, p. 312.
[57] The Directorate-General for Climate Action as a department of the European Commission was established long after, in February 2010.
[58] As Lenschow described the environmental policy nature.

conflictual since the beginning, thus causing problems for coordinated and coherent policy formulation.

Among the range of Commission's tasks, it is important to stress that the Commission is first and foremost empowered with the sole right to propose new EU legislation. Thus, all new policy proposals originate from this body. As a matter of facts, it can be argued that policy entrepreneurs' activities are extremely intense within this body. Remarkably, Yamin and Depledge stressed that given its tasks, the Commission is not required to be neutral[59].

Additionally, the Commission plays a fundamental role in monitoring the implementation of EU laws in member states. Yet, in case that states do not meet their obligations, the Commission can initiate enforcement actions against them. As regards the international level, it is worth taking into account that the Commission, alongside other EU officials, represents the EU in external fora.

Overall, legal scholars observed that during the decades, the Commission aimed at promoting collective European interests rather than national preferences. Nonetheless, in order to raise the chances of successful decision making and implementation, it had to balance its ambition for deeper integration with the need to be responsive to member states.

According to Lenschow[60], especially during the 1970-1980 decades, when environmental policy was not consolidated yet, the Commission attempted to advance its role as supranational actor. Yet, it promoted stringent environmental rules to the point that it went to exceed member states' status quo. Therefore, in the attempt of developing a proper environmental policy profile, not only did the Commission find itself in contrast with the Council, but it also met several national resistance as regards policy implementation. However, it cannot be denied that since the 1970s several states demonstrated their interest in environmental protection policy as well[61]. Hence, the Commission, backed up by national expertise, started to cooperate with member states by developing their national demands proposals for the consolidation of a common environmental policy. In order to do so, it regularly sought national ministries' opinions to ensure the feasibility of its proposals. In this way, the Commission tried to avoid or at least to anticipate the conflicts that might have otherwise discouraged decision-making. Indeed, supranational entrepreneurship began to appear much more productive in such a cooperative framework rather than within a confrontational *modus operandi*.

In this sense, Lenschow noted that along the decades that brought to the consolidation of the European environmental policy, the Commission became always more attentive to the member states'

[59] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, p. 45.
[60] Lenschow, A. (2010), "Environmental Policy: Contending Dynamics of Policy Change", in Wallace, H, Pollack, M.A, and Young, A.R, *Policy-Making in the European Union*, 6th ed. Oxford: Oxford University Press, p. 313.
[61] Lenschow argued that sovereign states were extremely concerned about the potential risk of competitive disadvantages.

point of view, and improved its relations with the "implementers on the ground"[62].

As already illustrated in the previous paragraph, it has to be noted that the development of policy proposals became the result of the extensive participation of outside advocacy groups. In this sense, the different DGs within the Commission became forum of lobbying by member states, firms and environmental advocates. Notably, lobbying activities create the opportunity for *non-state* groups to shape the policies that will impact them.

With the adoption of the fifth EAP[63], the Commission started to mention member states as real partners, and a range of formal and informal dialogue networks were established so as to foster a cooperative approach between the Commission and the states.

Selin and Van Deveer[64] noted that environmental leader states tended to influence agenda-setting processes by placing national government experts within the Commission, as external assistance is usually taken into account as well. Indeed, experts in the field can exert a considerable influence on environmental policy proposals.

Furthermore, in order to observe member states centrality in policy making in relation to the role played by the Commission, it has to be highlighted that with a simple majority within the Environmental Council, EU members can ask the Commission to consider a particular proposal for a possible policy change. The same goes for the European Parliament which, through a majority among MEPs[65], has the right to request the Commission to tackle a particular issue.

If the Commission performs a role of policy initiator, the Council and the EP are the main decision-making body of the EU[66]. Both their rules and respective competences were gradually adjusted during the EU history, especially those of the EP.

The Council is defined as the EU second body, which is made up of member state representatives who negotiate on the basis of national interests in order to seek common ground on regional issues. Alongside the EP, the Council is in charge of reviewing legislative proposals submitted by the Commission under the ordinary legislative procedure. As regards its structure, the Council - backed up by a separate Secretariat - meets in 10 different configurations of 28 national ministers. Likewise the Commission, the Council is characterized by segmentation. The Environmental Council is responsible for all kind of environmental issues, including climate change.

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[62] In his analysis, Lenschow employed this expression to designate the relevant environmental agencies established within member states.

[63] The European Community Programme of policy and action in relation to the environment and sustainable development (better known as the Fifth Environmental Action Programme) was approved by the Council and the representatives of the governments of member states on February 1993.

[64] Selin, H. and VanDeveer, D.S. (2015), "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources,* Vol. 40, p. 318.

[65] The acronym stands for "Members of the European Parliament".

[66] Also known as "co-decision" procedure. Co-decision is used for policy areas where the EU has exclusive or shared competence with the member states.

As for the DGs and the Commission, the coordination between the Environmental Council and the various other Councils has been extremely challenging along the decades. However, it was this "insularity" that often enabled the environment ministers to escape from some domestic constraints.

Most importantly, the Council became the ground where green leaders find themselves in confrontation with environmental laggards. As already introduced, richer European countries pertaining to the northern area (namely Germany, The Netherlands, Sweden and Denmark) were identified as leaders in the environmental field. On the other hand, poorer countries of the southern areas like Greece, Spain, Portugal, and new member states were depicted as laggards due to their refusal for tougher environmental standards. In this sense, the United Kingdom deserves with no doubt a special mention. During the course of this study, much attention is payed to the position adopted by the country along the decades as it proved to be fundamental for the EU performance at the international level. Indeed, given its insular location, and the legacy of its heavy industrial sector, its interests and position have deeply affected the negotiations that brought to the consolidation of a European climate change policy, especially during the early stages.

Going back to the focus of this section, the European Parliament (given its role of co-legislator alongside the Council) can be considered the third central actor of European policy making. Over the years, the EP managed to gain decision-making power, thus becoming the equal partner of the Council. Nowadays, the majority of environmental issues are tackled through co-decision procedures. As for the Commission, when the number of member states increased, the size of the EP grew as well, to the current 751 seats[67]. While in the past MEPs used to be selected by member states' national parliaments, since 1979 they started to be elected by universal suffrage every five years. The EP is organized into parliamentary committees, which are in charge to deal with specific issue areas. The ENVI Committee was set up to tackle issues regarding the environment, public health and food safety.

According to Lenschow[68] and others[69], the EP can be considered the 'greenest' of the three environmental policy making bodies aforementioned. In particular, Lenschow noted that especially during the 1990s, the EP fostered environmental policy implementation by pushing the Commission to systematically cooperate with societal and administrative actors of the field. In this sense, it is worth stressing that the majority of Commission's reports and modifications of implementation strategies were fostered by the EP.

The EP's involvement in environmental policy making has been also witnessed by its role of intermediary between the Commission and the citizens, as it passed on to the former the most

[67] http://www.europarl.europa.eu/meps/en/home.
[68] Lenschow, A. (2010), "Environmental Policy: Contending Dynamics of Policy Change", in Wallace, H, Pollack, M.A, and Young, A.R, *Policy-Making in the European Union*, 6th ed. Oxford: Oxford University Press, p. 315.
[69]http://www.europarl.europa.eu/factsheets/en/sheet/71/environment-policy-general-principles-and-basic-framework

meaningful citizens' petitions. In this context, it has to be highlighted that the ENVI Committee appeared to be one of the committees most involved in legislative procedures[70].

Overall, scholars agreed on considering the informal trilogue (among the Commission, the Council, and the EP) of extreme importance for policy making, as it gave the possibility to identify and agree on compromises before formal meetings were held. In this context, the pressure exerted by a wide range of interest groups representing environmental, consumer, and industrial interests is worth of notice as well.

Among the various environmental groups, the European Environmental Bureau (EEB[71]) deserves a special mention, as along the decades it became the largest network of environmental NGOs in Europe. The EEB was established in 1974, with the support of the Commission, which was seeking societal support so as to expand European environmental competencies, as well as to counterbalance the weight of strong industrial associations. It is worth stressing that environmental groups have the tendency to seek potential allies in the main EU bodies, namely the Commission, the EP, and even among leader states. Nowadays, the EEB brings together roughly 150 civil society organisations from more than 30 countries.

In the early 1990s, the EEB alongside the Friends of the Earth (FoE), Greenpeace International, and the World-Wide Fund for Nature (WWF) founded an informal coalition of leading environmental NGOs, whose involvement at the European level became always more intense. Since then, the coalition became even larger and was gradually joined by Climate Network Europe (CNE), BirdLife International, the European Federation for Transport and Environment (T&E), International Friends of Nature, Health and Environmental Alliance, and finally the CEE Bankwatch Network. As it can be observed, every NGO that joined the coalition is concerned with specific issues. Notwithstanding, they are all interrelated. Indeed, these kinds of coalitions give additional confirmation of the "horizontal nature" that characterizes the environmental sphere. NGOs are driven by different visions and philosophies, which become visible at the moment of performing their activities. Normally, those closer to the Brussels headquarters[72] focus their efforts on the policy formulation phase. Some NGOs emphasize their role as pressure groups while others prefer to act only as advisors, providing expertise and a great amount of useful information to the Commission. As regards the decision-making stage, NGOs usually resort to public campaigns in order to raise awareness among citizens on the issue, and search for direct contacts with MEPs and member governments to achieve the desired result.

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[70] Lenschow, A. (2010), "Environmental Policy: Contending Dynamics of Policy Change", in Wallace, H, Pollack, M.A, and Young, A.R, *Policy-Making in the European Union*, 6th ed. Oxford: Oxford University Press, p. 316.
[71] https://eeb.org/membership/our-members/.
[72] The NGOs aforementioned.

Apart from NGOs, both national industrial federations and firms are involved in the policy formulation and decision making processes. However, legal scholars observed that NGOs proved to be of utmost importance during the phases of policy implementation and enforcement. In fact, environmental groups are empowered of resorting to a sort of complaint procedure in order to inform the Commission of any situation of non-compliance by member states.

As illustrated, while the Commission has tended to play the role of policy initiator, and the Council alongside the EP that of policy maker, the ECJ[73] proved to be of utmost importance for the consolidation of environmental measures legitimacy. Yet, by using its rulings, the Court aimed at expanding the EU environmental policy role since the early stages of its consolidation. In order to do so, it first shed light on the relationship between single market operations and the necessity for the implementation of measures that could protect human health and the environment, specifying the way in which such measures could intersect with economic and trade issues.

For instance, in the *Danish bottle case*[74], the ECJ judged that in order to achieve common environmental objectives, the principle of free movement of goods could be overridden. Similarly, in the *Titanium Dioxide case*[75], the Court encouraged a process for delineating the decision-making procedures in the environmental sphere, and supported the EP for greater empowerment. Nonetheless, during the case the ECJ did not fail to take into account EU member states' pressing commitments.

Once achieved the consolidation of the environmental policy field, the main ECJ's responsibilities concerned mainly the implementation and enforcement of environmental measures. Yet, apart from interpreting the law, the Court is responsible for monitoring the actions undertaken by member states, thus ensuring compliance with EU law. At the same time, the Court has to deal with disputes between the parties. Contentious procedures are the means through which the Court is empowered of settling disagreements between member states, EU bodies, between the Commission and a member state, or even between individuals and European bodies. In case of non-compliance, the Court must resort to infringement proceedings that are usually submitted by the Commission against member states. As enshrined in Article 228 of the Treaty establishing the European Community (TEC), in case of prolonged non-compliance the Court might impose pecuniary sanctions. However, articles 226 and 228 allow member states to reach compliance before the Court's decision. It is interesting to note that the number of cases initiated under Article 228 amounts to the largest share across European policy areas[76].

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[73] The supreme court of the European Union in matters of EU law.
[74] Commission v. Denmark C-302/86 [1988] ECR 4607.
[75] Commission v. Council C-300/89 [1991] ECR I-02867.
[76] Lenschow, A. (2010), "Environmental Policy: Contending Dynamics of Policy Change", in Wallace, H, Pollack, M.A, and Young, A.R, *Policy-Making in the European Union*, 6th ed. Oxford: Oxford University Press, p. 318.

At the same time, ECJ proved to be extremely useful in setting a "common" foreign environmental policy. Yet, the basis for the EU environmental involvement at the international level were laid already in 1971, when the ECJ decided that the EU's external powers had to be determined according to the existing internal competence. While previously the organization could only act in areas of its exclusive competence[77] directly established by the EC Treaty, after the ECJ's decision - and in absence of any explicit Treaty provision - both the EU and Member States were allowed to participate in most environmental regimes. This is because competence regarding environmental issues has always been mixed. Therefore, as far as the environmental field is concerned, the EU and its member states have always tried to act in coordination through these sorts of "mixed agreements". In this sense, Oberthür and others[78] stressed that mixed agreements became the standard case of EU representation in international environmental affairs, thus fostering the consolidation of a common foreign environmental policy.

1.4 EU Environmental and Climate Change Policy.

In order to trace back European climate change policy's roots, it is essential to analyse the environmental legislation emergence, a broader EU policy realm that began to develop long before. Yet, not only does its margin of action entail the fight against climate change, but it also involves other environmental problems[79]. According to Massai[80], the environmental field represents one of the most challenging chapters of the Community, mainly due to the complexity of its legislation as well as the strong political commitment of the European institutions. Notably, the phrase "climate change" or any similar wording was not included within the EEC Treaty, and several time it had to pass before obtaining some sort of recognition. At the same time, the original treaty establishing the EEC did not contain any specific reference to environmental protection either[81]. Notwithstanding, it did not prevent the Community from acting in this field by playing the card of the internal market objective.

The first measures undertaken by the Community were based on former article 100 of the

[77] As for instance in trade and fisheries policy.
[78] Oberthür, S. (2000), "The EU in international environmental regimes and the Energy Charter Treaty", in Gupta, J. and Grubb, M.J, *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands, Kluwer Academic Publishers, p. 99.
[79] The others *Environmental acquis categories* refer to air quality, waste management, water quality, nature protection, industrial pollution, chemicals and GMOs, noise, and civil Protection. The *environmental acquis* refers to the collection of all environmental laws. In French, the term *acquis* means "which has been agreed upon".
[80] Massai, L. (2011), *The Kyoto Protocol in the EU: European Community and Member States under International and European law*. The Hague: TMC Asser Press, Springer, pp 22-23.
[81] Joint action in the fields of environment was established since 1972.

Rome Treaty[82] that enabled the Council to unanimously issue directives for the approximation of laws coming from all member states, therefore affecting the functioning of the common market. Among the main principles stated by the 1957 Treaty were the promotion of "harmonious development of economic activities", a "constant improvement of the living and working conditions of their people", and "the rising of the standard of living". Despite being extremely broad and vague, the former EEC managed to take advantage from them. Yet, the Council, with the ECJ support, employed these provisions to issue environmental measures according to former article 235[83], which facilitated the adoption of EU legislation even in the absence of a precise treaty basis.

Remarkably, scholars observed that especially during the very first phase of its development, the environmental sector was conceived as a fundamental element contributing in the process of economic integration itself. However, it was too early to talk about a coherent set of EU environmental rules. Yet, Brinkhorst depicted the EU's attitude to environmental protection during the 1960s, and until the early 1970s, as "incidental, responsive and unarticulated"[84]. In institutional terms, analysts defined the European environmental policy as a steady deepening process that took off since the 1970s. Legal scholars unanimously agreed on identifying three main phases as regards the evolution of the European environmental legislation[85].

As noted by Mathis[86], the first period from 1972 to 1987 served to lay the basis for the normative core of environmental legislation. In the meantime, important parallel developments started to take place on the international level, as public environmental concern began to emerge. In 1972, with the United Nation Conference on the Environment held in Stockholm, public and scientific concerns on the "limits of growth" were addressed for the first time, calling for political, scientific, and technical cooperation around environmental issues. The then nine EEC leaders[87], responded actively to the international call in occasion of the 1972 Paris Summit. By setting agendas and identifying areas for targeted action, member states initiated the practice of developing the so-called Environmental Action Programmes (EAP)[88]. From that moment on, EU Environmental policy

[82] Article 100 of the EEC Treaty was replaced by article 115 of the Treaty on the Functioning of the European Union (TFEU).
[83] Article 352 of TFEU replaced the former 255 article.
[84] Brinkhorst (1993), as cited in Orlando E (2014) "The Evolution of EU Policy and Law in the Environmental Field: Achievements and Current Challenges", in Bakker C, Francioni F (eds) *The EU, The US and Global Climate Governance*. London and New York: Routledge, p. 3.
[85] See Lenschow, A. (2010), Damro, C., Hardie, I and MacKenzie, D. (2008), Selin, H. and VanDeveer, D.S. (2015).
[86] Mathis, C.F. (2016), "European environmental policy", Encyclopédie pour une historie nouvelle de l'Europe. Available at: https://ehne.fr/en/article/political-epistemology/european-model-defined-public-policies/european-environmental-policy consulted on 02/03/2019.
[87] The "inner six", Denmark, Ireland, and the United Kingdom.
[88] Seven different EAP's have been developed so far. They consist on medium-term programmes, which contain lists of planned activities. Nonetheless, it is worth stressing that despite their ambitious nature, they are not binding.

expanded dramatically. As observed by Orlando[89], the environmental field became "one of the policy sectors where the process of "Europeanisation" of national legislation is most apparent".

It was within the EAP context that the European Commission began including environmental cooperation also in its relations with third parties. As introduced in the previous paragraphs, the Commission associated the competence over environmental policy with its competence in trade policy asserting that implementing international environmental agreements could influence EU competitiveness. Consequently, since the 1970s the Community became part of a wide range of multilateral environmental agreements. Furthermore, in 1981 the Commission created the Directorate General XI, which corresponds to the DG Environment of today. Indeed, the first Commission's measures represented a serious attempt at institutionalising environmental policy and showed an "institutional acknowledgement of the growing importance of environmental protection within the Community's policy portfolio"[90].

As noted by Haverland[91], the adoption of the 1986 Single European Act (SEA) initiated the second important phase for the environmental legislation development. To begin with, it created the European Community (EC) codifying its competences, and launched a range of important changes within the environmental decision-making processes. The SEA embodied the environmental policy within the EU's treaty structure, and gave an explicit legal basis from which to make policy[92].

Part VII, Article r-t, enshrined a set of environmental objectives as well as fundamental principles to expand and strengthen EU environmental policy, granting to it the same priority as other policy areas in the EU. Notably, qualified majority voting in the Council was introduced. Previously, the Council used to proceed by consensus, where each country had a veto power. In this sense, member states realized that a shift toward majority voting was necessary to make effective decisions in a growing Community. Moreover, with the SEA, the EP increased its power, by establishing a cooperation procedure for policy-making together with the Council. Until that moment, the Council used to consult the Parliament; however it was free to decide whether to follow its recommendations or not.

The third phase of EU environmental policy corresponds to the entry into force of the Maastricht Treaty - the Treaty on the European Union (TEU) - in 1993. The agreement strengthened European competence by empowering the organization with the capacity to conclude international

[89] Orlando E (2014) "The Evolution of EU Policy and Law in the Environmental Field: Achievements and Current Challenges", in Bakker C, Francioni F (eds) *The EU, The US and Global Climate Governance*. London and New York: Routledge, p. 1.
[90] Damro, C., Hardie, I and MacKenzie, D. (2008), 'The EU and Climate Change Policy: Law, Politics and Prominence at Different Levels', *Journal of Contemporary European Research*, Vol. 4, No. 3, pp 179-192.
[91] Haverland, M. (2003), "The impact of the European Union on Environmental Policies", in Featherstone, K. and Radaelli, C.M, *The politics of Europeanization*. NY: Oxford University Press, p. 205.
[92] *Ibidem.*

environmental agreements, whose implications became binding for both the European institutions and member states. Notably, by incorporating the EC and EURATOM, the Maastricht Treaty created the EU as a political identity. Actually, it should be clarified that this was just one "pillar" of the new European Triad. Additionally, a second pillar was created in order to develop a Common Foreign and Security Policy, and a third one to cover intergovernmental cooperation in Justice and Home Affairs[93].

Among various implications, the Maastricht Treaty enshrined the pursuit of a "sustainable development" and its integration in other policies areas (including the international arena) became a core goal of the organization[94]. The EP gained co-decision powers, and qualified majority for all sorts of aspects regarding environmental policy were finally introduced in the Council.

Taking into account the three phases just illustrated, it is worth observing how the development of environmental legislation went hand in hand with the gradual and impressive transformation of the European organizational structure. Indeed, legal scholars unanimously agreed on the fact that the EU has always been a complex and dynamic entity, whose evolution reflects in each of its policy domains, bringing implications within the policy-making processes.

The completion of the Maastricht Treaty, in the framework of a confident movement towards the "Single European Market", marked a moment of peak optimism about the European integration. Indeed, not only was the 1990s a significant decade for the evolution of EU and the environmental legislation, but it was also a prolific moment for the development of climate change policy, conceived as a distinct policy domain. In the context of the environmental legislation, the inclusion of climate change as a "theme" in the fifth EAP (1993) is noteworthy, as it was (among others) a signal of the importance attributed by the EU to the issue. Most importantly, the decade witnessed the formulation of numerous regulatory approaches designed to tackle critical problems specifically related to climate change. Clearly, also climate change policy in its specificity largely benefited from the concerns raised by the international community. As it happened with the EU environmental legislation, the national and international dimensions developed closely since the very beginning.

[93] The second and third pillars found their way into the Amsterdam Treaty (1997), which entered into force in May 1999. However, with the adoption of the Lisbon Treaty in 2009, the three-pillar constitutional structure was eventually abolished.

[94] In 1995, Sweden, Finland and Austria entered the organization strengthening the weight of environmental concerns within the EU even more.

1.5. The early stages of EU climate policy.

As affirmed by Gupta and Grubb[95], the climate change problem has to be framed in the context of a "sustainable development"[96], in which such a challenging issue is part of a broader dominion where resource efficiency, technological innovation, and economic modernisation are inextricably connected. In this respect, it is worth pointing out that the main responsible for the warming up in the atmosphere (thus causing climate change problems) is the burning of fossil fuels, in particular petrol, coal, gas, lignite, and wood. Considering that gases emissions are tightly linked to many areas of economic activity, their reduction represents a real political challenge. Not only does it require governments' action, but also the support of the industry field, advocacy groups, and citizens.

The line of reasoning provided by Krämer[97] appears rather similar. According to him, climate change is an integrated subject, where various policy sectors have to be bundled under one heading. Measures aiming at influencing the production, supply, and consumption of energy are labelled as "energy policy", while those related to the transport of these fuels are classified as "transport policy". The subsequent effects on the global climate are grouped into the so-called "environmental policy". The same happens with regard to agricultural policy, taxation policy, internal and external trade policy; these are all political sectors connected to, and affected by, climate change measures.

Legal scholars as O'Riordan and Jäger[98] offered their useful perspective on the issue. They described climate change policy as a "wide net arena" in which the broad range of "issue networks" and "actor coalitions" represent the two key dimensions. Yet, the authors explained how the linkages with other issues are so strong that climate change policy would be successful if treated as an "economic policy, a fiscal policy, an employment policy, a social policy or an international relations policy".

At the international level, the global community addresses compelling issues like the fight against climate change by developing international regimes. In this sense, numerous authors observed that international cooperation among countries on climate change issues have become so evident to be qualified as a "regime"[99]. In 1982, Krasner defined the concept of "regime" "as sets of principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given

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[95] Gupta, J. and Grubb, M.J. (2000) "Leadership: Theory and Methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 23.
[96] In 1992, the principle was enshrined in Article 3 of the Maastricht Treaty (TEU).
[97] Krämer, L. (2006) "Some reflections on the EU mix of instruments on climate change", in Peeters, M., and Deketelaere, K., *EU Climate Change Policy: The Challenge of New Regulatory Initiatives*. Cheltenham: Edward Edgar Publishing, p. 280.
[98] As cited in Gupta, J. and Grubb, M.J (2000) "Leadership: Theory and Methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 23.
[99] *Ivi*, p. 17.

area of international relations"[100]. Within this definition, three elements of primary importance stand out. Firstly, the existence of an interrelated range of rules, norms, and decision making procedures. Secondly, the presence of a group of actors that make use of these principles to guide and support them while cooperating. Thirdly, the willingness of engaging with array's expectations.

On the basis of these key elements, Gupta and Grubb[101] stressed the importance of the notion of "international regime" in the climate change context, as it serves to explain how countries cooperate under circumstances in which concepts such as rational choice, prisoner's dilemma, collective goods, and global commons theories would predict non-cooperation. Yet, most regime analysts observed how the global community became aware of the fact that cooperation among governments is much more convenient than "free riding" as far as the protection of the "commons"[102] is concerned.

As argued by Yamin and Depledge[103], the international climate change regime is the result of a "formative period", which initiated in the early 1980s, mainly through the activities of the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP)[104]. The climate change issue was addressed for the first time by the UN General Assembly in 1988, when, by adopting resolution 43/53, climate change was acknowledged as "a common concern of mankind"[105]. From that moment on, the whole of the international community started to engage for the consolidation of a strategic climate change policy framework. Resolution 44/207 of 1989 enshrined the beginning of international negotiations for global warming reduction. Indeed, alongside the institutions conceived specifically to deal with climate change[106], the 1992 UNFCCC Convention, and the 1997 Kyoto Protocol, are considered the key elements of the climate change regime[107]. The former defined the ultimate objective and the principles to be followed by the international community; the latter established the commitments to be followed by all Convention parties.

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[100] Krasner, S.D, (1982) "Structural causes and regime consequences: regimes as intervening variables", *International Organization,* Vol. 36, No. 2, Spring, p. 186.

[101] Gupta, J. and Grubb, M.J. (2000) "Leadership: Theory and Methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 17.

[102] The term "global commons" was coined to indicate those areas and resources, which are not subjected to the sovereignty of any States. The aim was that of preserving the freedom of access for the benefit of all. Hence, the whole of the international community is expected to act jointly in order to safeguard them.

[103] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures.* Cambridge: Cambridge University Press, p. 22.

[104] Massai, L. (2011), *The Kyoto Protocol in the EU: European Community and Member States under International and European law*. The Hague: TMC Asser Press, Springer, p. 31.

[105] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures.* Cambridge: Cambridge University Press, p. 22.

[106] Resolution 43/53 of 1988 endorsed the established of Intergovernmental Panel on Climate Change. Resolution 45/212 of 1990 created the Intergovernmental Negotiating Committee.

[107] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures.* Cambridge: Cambridge University Press, pp 24-25.

As a matter of facts, the 1990s is considered a decade of utmost importance for the evolution of climate change policy at both national and international level. Oberthür and Pallemaerts[108] suggested dividing the decade into two main periods. The first half of the 1990s was described as the agenda-setting phase during which the climate change issue occupied a significant part of both the international and European policy agendas. On the other hand, the second phase lasted from 1995 to 2001, and was characterized by a set of negotiations that led to the formulation of a concrete international climate change policy, culminated into the adoption of the 1997 Kyoto Protocol, a watershed moment in the fight against climate change.

Despite the 1990s was a crucial period for the evolution of climate change policy, it is fundamental to point out that the first scientific hypotheses regarding the damaging effects of carbon dioxide (CO_2) in the atmosphere are not that recent. Yet, they date back to the end of the 19th century. However, at that time governments used to be mainly focused on the protection of the ozone layer, while climate change was merely perceived as a hypothetical problem, on which there was no scientific consensus yet. When the resolution of the Executive Council of the World Meteorological Organization (WMO) along with the United Nations Environment Program (UNEP) established the Intergovernmental Panel on Climate Change (IPCC) in 1988, international consensus on the science of climate change, its causes, repercussions and possible response strategies came forth. The first IPCC Assessment Report released in 1990 brought scientific evidence on the damaging consequences deriving from climate change, and underlined the importance of intergovernmental cooperation[109].

In June the same year, the European Community started with its attempts to delineate a proper climate change policy. Yet, the Council asked for the formulation of targets and strategies that could limit the emissions of greenhouse gases, with a particular emphasis on CO_2. In October, the Community undertook a concrete step forward for the development of a climate package. A joint Council of EC Energy and Environmental Ministers of member states declared the EU willingness to stabilize CO_2 emissions at 1990 levels within the organization as a whole by the year 2000. Indeed, these conclusions were a turning point that enabled the Union to position itself as a leading actor and key player in the forthcoming United Nations' Conference on Environment and Development (UNCED). In this sense, it is worth highlighting that EU members were among the first countries to adopt targets for limiting CO_2 emissions, fostering the negotiation of a binding Convention including

[108] Oberthür, S. (2010), *The New Climate Policies of the European Union: Internal Legislation and Climate Diplomacy*. Brussels: Brussels University Press, p. 27.

[109] In 1996, a second assessment report confirmed the threat already predicted by the first 1990 report. To do so, it revised scientific findings and emission projections to eventually conclude that there was already a "discernible human influence" on climate. See Grubb and Gupta (2000), p. 6.

emission constraints. Instead, the US and other non-EU OECD[110] countries appeared rather hostile regarding the issue of early action and bindings targets on climate change. Nonetheless, it has to be stressed that the Council failed to clarify explicitly the way in which these targets would be achieved. Yet, it was not established how the "common target" would be distributed among member states (the so-called "burden sharing" mechanism). Only few member states had announced national emission limitations or reduction targets, thus bringing evidence of the presence of deep internal differences within the organization since the very beginning. Indeed, it has to be taken into account that stabilization mechanisms within the EU do not involve the same implications that would imply in other individual states, as the former allows emissions by some countries to increase as long as others reduce them accordingly. For instance, Spain, Portugal, Greece, and Ireland (the less-developed group of countries) had a base of per-capita emissions far below the EU average percentage (those from Germany and the United Kingdom being about twice the level in Spain), and made it clear that they would not stabilize their own emissions. Indeed, it can be observed that the conclusions issued by the Council presented the EU far-reaching plans to the outside world, but the difficult decisions about the actual implementation were postponed. The Commission in the meantime, was in charge of elaborating a climate change package, which could encompass a set of impressive measures to be presented at the 1992 UNCED Conference.

As observed by Grubb[111], the EU's stabilization objective was not a random choice. Nor was it simply a symbolic and psychological demonstration to the developing world that developed countries intended to start tackling climate change problems by ensuring a reduction in their CO_2 emissions. In this sense, the projections calculated by the European Commission's Energy Directorate were fundamental to provide the Union with an overview of the forthcoming consequences. Yet, the reference projections indicated that CO_2 emissions were expected to rise about 13 per cent above 1990 levels by 2000 if no abatement measures would be implemented[112]. The choice concerning the more efficient policy instruments to adopt was highly debatable within the Commission and between the member states. A wide range of options was discussed, including energy efficiency measures, economic and fiscal instruments, as well as transport management. Extended discussions backed up by a series of analyses and documents led to "a five-part strategy"[113], which in addition to the adoption of national climate programmes, suggested a great variety of policy instruments.

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[110] The Organization for Economic Cooperation and Development was set up in 1961 with the aim of fostering economic progress and world trade. Nowadays it comprises 36 countries from all over the world.

[111] Grubb, M., (1995), 'European Climate Change Policy in a Global Context' , in Helge O le Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), *Green Globe Yearbook of International Co-operation on Environment and Development 1995.* Oxford: Oxford University Press, p. 43.

[112] Data retrieved from the Commission of the European Communities, "A view to the Future", Energy in Europe, special issue (Sept. 1992), CEC-DGXVII, Brussels, in Grubb, M., (1995).

[113] As labelled by Grubb (1995).

Firstly, as regards energy efficiency, the Commission recommended the implementation of the so-called SAVE[114], which was supposed to reduce CO_2 emissions in 2000 by 3 per cent below the existing projections. Secondly, the THERMIE[115] and JOULE[116] programmes were designed in order to promote the dissemination of better energy conversion and the use of technologies. Just the THERMIE by itself was estimated to contribute for another 1.5 per cent of CO_2 emissions reduction. Thirdly, the ALTENER programme was proposed to support the development of renewable energy technologies.

As legal scholars observed, one of the main European objectives within its climate change package was that of increasing energy efficiency in the interest of reducing energy imports. Indeed, the programme aforementioned stressed a compelling concern shared by all member states.

The fourth part of the strategy entailed the introduction of a combined energy/carbon tax but without any CO_2 levy, as this would favour nuclear power. It was a sort of "hybrid" tax, starting with $3/barrel in 1993, expected to increase by 1/$ annually, which would amount to $10/barrel by the year 2000. Following this projections, it was estimated that the tax would lead to a 3-5.5% CO_2 emissions reduction from 1990 levels by the year 2000. When the Commission presented its energy/carbon tax proposal, member states' positions became immediately clear. The "cohesion countries" (Spain, Greece, Portugal, and Ireland) reiterated their opposition to such stringent measures, asking for structural funding in exchange for their acceptance to the proposal. On the other hand, France asked for a pure carbon tax in order to protect its nuclear industry, while the United Kingdom suggested developing the tax at the national level. Denmark and the Netherlands were the only supporters of the tax, arguing that the adoption of it within their countries would lead to a broader acceptance among the other member states. It is worth pointing out that the disputes emerged in the context of the energy/carbon tax were a further important sign of the difficulties encountered by the whole of the Community in delineating a common line of action able to put together all member states. The divergence of views between the Commission and the Council caused a partial deadlock in the development of a European climate policy on the eve of the 1992 Rio Summit.

Finally, the fifth and last part of the Community strategy put in place a monitoring mechanism for CO_2 and other GHG emissions, which entailed member states to provide the Commission with their national strategies to reduce their emissions. The latter, in turn was in charge of reporting them to the Parliament and the Council. The monitoring mechanism also established a "regulatory" Committee, which was empowered of monitoring and reviewing national strategies whenever

[114] The programme entails "Specific Actions for Vigorous Energy Efficiency".
[115] The acronym stands for "European Energy Management Technologies".
[116] The programme refers to "Joint opportunities for Unconventional or Long-Term Energy Supply".

progress towards the target would seem inadequate.

Overall, the full implementation of the measures provided by the climate change package were supposed to reduce projected emissions by 8.5-11 per cent, thus leaving a reasonable gap to be filled by additional member states' initiatives. In the meantime, in parallel to the efforts made by the Community within its borders, international concerns for climate issues culminated in the adoption of the United Nations Framework Convention on Climate Change (UNFCCC), the final product of the UNCED Conference held in Rio in 1992. In this framework, the participants were divided between developed and developing countries by following the classic UN division. The countries whose economies are defined as "in transition" (EITs) - for instance the former communist countries of Eastern Europe, Russia and Ukraine - were included within the developing countries group. They were entrusted with the tasks of preparing national inventories and reporting their national emission levels. On the other hand, the developed countries were in charge of reducing their greenhouse gas emissions to 1900 levels in the year 2000.

Overall, the Convention that entered into force in 1994 represents an historical watershed as it provided the foundation for international cooperation on climate change.

Article 2 illustrates the ultimate objective of the Convention, calling for*:* "[the] stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with climate system". Notwithstanding, no specific measures or quantified objectives were laid down in order to achieve the aforementioned goal.

Article 22 of the UNFCCC established the participation of "any regional economic organization" allowing them to "decide on their respective responsibilities for the performance of their obligations under the Convention". The Community and its member states ratified the UNFCCC, standing out as one of the strongest supporters of the Convention since the very beginning. Decision 94/69/EC clarified that:

> *The commitment to limit anthropogenic CO_2 emissions set out in Article 4 (2) of the Convention will be fulfilled in the Community as a whole through action by the Community and its Member States, within the respective competence of each*[117].

Despite the European forward-looking proposals, it is worth stressing that no concrete internal policy was implemented within the Community until that moment. Contrary to initial intentions that expected the climate change package to be agreed by the Council before the Rio Summit, the measures were adopted only in 1993. Most importantly, the final package version resulted to be far

[117] As cited in Oberthür, S. (2010), *The New Climate Policies of the European Union: Internal Legislation and Climate Diplomacy*. Brussels: Brussels University Press, p. 30.

away from the original one, as each section underwent several amendments.

As regards the carbon/energy tax, even though the idea was not completely abandoned since other energy taxation options kept being discussed, the initial proposal was removed from the package. None of the member states (except Denmark which adopted one by its own) showed their willingness towards the adoption of a carbon tax, being more concerned about their industrial competitiveness. The SAVE[118] programme objectives were drastically downsized, mainly due to a new interpretation of the subsidiarity principle, which allowed member states to freely pick and choose measures subjected to EU competition law. Likewise, the scope and content of the ALTENER programme[119] underwent considerable reductions. As far as the two technology-oriented programmes - THERMIE and JOULE - is concerned, they were only launched in 1995, but their contribution appeared rather marginal.

Legal scholars agreed on considering the monitoring mechanism[120] as the least controversial element of the Commission's climate change package, even though its progress appeared rather patchy. The first evaluation in March 1994, was on time but incomplete. The second one had to be delayed of one year, and despite its content had improved in quality, reports provided by central member states such as Germany, France, Italy and UK were inadequate to evaluate progress in a proper way. Due to several difficulties in comparing data, and strained Commission capacities, the years ahead followed the same trend. Indeed, the mechanism called for some adjustments. For instance, member states did not establish any quantitative commitments in their national programmes. However, the mechanism proved to be extremely useful in focusing attention on the actions taken at national level by each country.

As observed by Oberthür and Pallemaerts[121], GHG emission reductions were registered during the first part of the 1900s, but it seems highly unlikely that such decrement would derive from the implementation of a delayed set of European climate policies. Rather, GHG emission reductions during this period have to be attributed to political and economic events that despite being unrelated to climate change brought significant consequences at the international level. The German reunification and the dash from coal to gas in the UK were the main responsible in this sense. In this context, the EU acquired more credibility due to the fact that while its emissions appeared to be within sight of the stabilization goal, the majority of OECD countries were experiencing a growth in their emissions. When after 1994 GHG emissions in the EU-15 began to rise again, it became even clearer

[118] Council Decision 91/565/EEC, OJ No. L 307, 1991.
[119] Council Decision 93/500/EEC, OJ No. L 235, 1993.
[120] Council Decision 93/389/EEC, OJ No. L 167, 1993.
[121] Oberthür, S. (2010), *The New Climate Policies of the European Union: Internal Legislation and Climate Diplomacy*. Brussels: Brussels University Press, pp 32-33.

that the implementation of mitigation policies until that moment had been more a failure than a success at both the EU and the member states level.

Chapter 2: The EU and the key players of Kyoto.

This chapter aims at further developing the basis of this study by placing the EU in relation to its counterparts, namely the other key players of the Kyoto process. The chapter is divided in two parts. The former provides several theoretical insights on multilateral negotiations dynamics (Sections 2.1-2.2), and illustrates the coalitions that emerged in the Kyoto negotiations so as to contrast the European influence (Section 2.3). Using the notions provided, the latter part shifts its focus on the EU and, in particular, on the way it attempted to tackle a global challenge like climate change (Section 2.4). Scholars confirmed that the EU has been recognized by sovereign states as an international actor in the climate change regime. Notably, some experts argued that during climate negotiations the Union imposed itself on the international scenario as a coalition. This perspective is fully addressed in the last part paragraphs.

2.1 European Union and international negotiations: a three-level game.

Whatever the issue at stake, international negotiations imply a high degree of complexity for all sovereign states. Notwithstanding, the dynamics taking place at the EU-level are even more complex. In this sense, there is no doubt that the peculiar institutional structure of the Union made the organization absolutely unique with respect to all other sovereign states of the international community. Notably, in order to take part to an international negotiation and affect the process in a significant way, member states are first of all supposed to collaborate with the EU institutions to reach a compromise on a final position. Indeed, this is not what happens within other sovereign states.

The following section aims at explaining what occurs at the domestic level every time a sovereign state takes part to an international negotiating process. When observing the way in which these kinds of dynamics take place, it becomes evident that relevant differences between the EU and the other states of the international community exist.

The United Nations Framework Convention on climate change (UNFCCC) represents the first concrete accomplishment achieved by the international community in the attempt of dealing with climate change issues. As noted by Oberthür and Ott[122], the Convention set up the playing field as well as the main rules for the international climate policy game. Since that moment, a process for tackling the climate change problem initiated.

The EU found itself in a wide arena, where the whole of the international community – developing and developed countries – started to negotiate in search for a common line of action to adopt. Indeed, governments were the key players in this framework, being the only entities legally competent to adopt and implement policies designed to address climate change issues.

International multilateral negotiations distinguish themselves from other types of negotiations because of their high level of complexity. Yet, states are not unitary actors; rather, they comprise an heterogeneity of views coming from different government departments. Indeed, such heterogeneity also reflects the wide range of NGOs that constantly exert lobby activities within the State so as to lead the latter to take a particular stance at the negotiating table. In other words, before negotiating in the multilateral arena, sovereign states must first reach an agreement at the domestic level. Robert Putnam has famously conceptualized this mechanism as a "two-level game":

> *At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign.*[123]

The two-level game concept is crucial to understand the complexity of international multilateral negotiations. Before starting to negotiate with the other counterparts on a specific issue, states have to define a common position at the national level. Considering the plurality of actors involved, reaching a compromise becomes often extremely challenging. Although this kind of mechanism affects the whole of the international community, it is worth pointing out that in the EU the two-level game presents an additional element of complexity. As explained, when the EU emerged as a regional organization, states agreed to delegate part of their sovereignty to the European institutions. As a matter of facts, this regional integration phenomenon created an intermediary level that goes in

[122] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 43.
[123] Putnam, R.D., (1988), "Diplomacy and domestic politics: The logic of two-level games", *International organization*, Vol. 42, No. 3, p. 434.

between the ones illustrated by Putnam creating a "three-level" game, as denominated by Oberthür[124].

In the first place, member states have to agree on a position at the domestic level, within their borders. Consequently, before interfacing with the counterparts at the international level, a common position has to be established at the European level as well. There is wide acceptance among legal scholars on the fact that the three-level game dynamic represents one of the main obstacles encountered by the Union in international negotiations. Indeed, when the first European attempts to exert a leadership role in the fight against climate change occurred, the EU stance at the international level complicated even further. This is because, in order to exert effective leadership over other countries in multilateral negotiations, the position of the leader cannot be fragmented.

2.2 International multilateral negotiations: implications and complexities.

In order to assess the dynamics and the outcomes of an international negotiating process, it is indispensable to consider a wide range of aspects. Following academics' argumentations, this section attempts to illustrate the most relevant factors that influenced the outcomes of the Kyoto process. The aspects taken into account are indeed numerous. They span across the mechanisms intrinsically related to international negotiations, as for instance coalitions' formation, to the problematics provoked by the specificity of the climate change issue, like the impacts of climate change. In this section, the behavioral patterns typically adopted by the parties when negotiating are taken into account as well.

To begin with, it is worth drawing the attention on the large number of negotiating parties that took part in the process. In order to cope with the complexity deriving from the presence of a wide number of actors, a common tendency is that of forming coalitions[125]. There is a wide acceptance among legal scholars that coalitions are a basic component of multilateral negotiations[126]. They can take different shapes, being more or less articulated. Some of them enable sovereign states to negotiate together and to speak with a single voice, while others are formed by looser groups confining themselves merely to information sharing. Normally, their function is that of easing the negotiation process, as they serve to downsize the number of proposals or requests coming from all members. However, being

[124] Oberthür, S., (2000) "The EU in international environmental regimes and the Energy Charter Treaty" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 104.
[125] Depledge, J., (2005), *The Organization of Global Negotiations: Constructing the Climate Change Regime*. Bath Press: Bath, p. 9.
[126] Zartman (1994), Crump (2000,2001), Boyer (1996). They were cited by Dupont, C. (2003), "History and Coalitions: The Vienna Congress 1814-1815", *International Negotiation,* Vol. 8, No.1, p. 169.

complexity an intrinsic component of coalitions, in certain circumstances they may even contribute to slow down the process. It cannot be denied that when coalitions emerge, they bring with them their own dynamics.

As noted by Depledge[127], coalitions introduce a further stage to the two-level game conceptualized by Putnam, which is a dynamic similar to that taking place in the EU. This means that, in order to negotiate with the other parties, it must be first reached an agreement within the coalition. In this sense, as suggested by Dupont[128], the main problem is that members frequently fail to establish the coalition objectives clearly. At the same time, this ambiguity creates confusion on the way objectives should be achieved. Hence, in most cases, ambiguity accompanies coalitions during the negotiation process.

As pointed out by Dupont[129] one of the main indicators that can be used to measure the success of a coalition, is the degree of stability and unity. Yet, it is worth stressing that cohesiveness among members can decrease over time, mainly due to unexpected negotiation progresses. Consequently, members may even decide to shift to another coalition.

Being the EU a regional organization comprising a high number of members, during the Kyoto negotiations it engaged with the other sovereign states as a unified entity, thus increasing its influence. Yet, while observing the outcomes of the negotiating process as well as the contributions given by sovereign states respectively, scholars have tended to analyze the European performance as a whole, rather than evaluating the role played by each states[130]. While Oberthür and Ott[131] referred to the EU as a grouping of countries, Yamin and Depledge defined the EU as "the most cohesive negotiating coalition in the climate change regime"[132]. Indeed, as stressed by the authors, considering the three-level game taking place within the European borders it becomes extremely difficult to agree on a common position.

During the Kyoto process the EU found itself in contrast with two main coalitions, namely JUSSCANNZ[133] and the Group of 77. Notably, members of JUSSCANNZ decided to join their forces against the EU in order to pursue flexibility and cost-effectiveness. This explains why the

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[127] Depledge, J., (2005), *The Organization of Global Negotiations: Constructing the Climate Change Regime*. Bath: Bath Press, p. 9.
[128] Dupont, C. (2003), "History and Coalitions: The Vienna Congress 1814-1815", *International Negotiation*, Vol. 8, No. 1, p. 169.
[129] *Ibidem.*
[130] As cited in Gupta, J., and Van der Grijp, N., (2000), "Strengths, weaknesses, opportunities, and threats of the EU", in Grubb, M and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 264.
[131] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 13.
[132] Yamin, F. and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, p. 42.
[133] Later renamed as the "Umbrella Group".

JUSSCANNZ countries were soon labelled as laggard coalition[134]. Consequently, interactions between the EU and JUSSCANNZ proved to be extremely demanding during climate negotiations.

Against this backdrop, it becomes evident that reaching an optimal agreement taking into account the preferences and interests of all the parties is highly demanding. Apparently this is the reason that led Rittberger to define a negotiation as "a process of mutual persuasion and adjustment which aims at combining non-identical actor preferences into a single joint decision"[135]. This means that during a negotiating process the skills put into practice by the negotiator are crucial to define the outcomes of a negotiation.

Depledge[136] noted that a negotiation process articulates in a number of different stages. Indeed, one of the crucial moments is when parties submit formal proposals, for they reveal their divergent preferences or positions on a specific issue of the negotiation. Generally, the tabling of proposals marks the transition moment from the exploration stage – of the issues on the agenda – to that of bargaining.

In this context, it has to be stressed that empirical research highlighted that negotiations are not always carried out by adopting a problem-solving attitude. Yet, most frequently parties tend to adopt a bargaining behavior[137], even though most research recognized that the problem-solving approach generates greater flexibility, and leads to more "frequent, efficient, equitable, and durable agreements"[138] with respect to bargaining. Indeed, flexibility is a crucial determinant in negotiations, as it entails the achievement of mutually beneficial solution, satisfying the identities, needs and interests of all parties[139].

As regards bargaining behavior, Gulliver described the process as a "complex pattern of singular and joint actions such as requests, exchanges, questioning […] that goes through known stages of development"[140].

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[134] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 47.

[135] Rittberger (1983) as cited in Depledge, J., (2005), *The Organization of Global Negotiations: Constructing the Climate Change Regime*. Bath: Bath Press, p. 5.

[136] Depledge, J., (2005), *The Organization of Global Negotiations: Constructing the Climate Change Regime.* Bath: Bath Press, p. 5.

[137] Given the impellent threat of climate change, and especially after IPCCC numerous reports, the international community was expected to cooperate for the sake of the entire community, thus fostering an attitude more oriented to problem-solving rather than bargaining. Nonetheless, legal scholars, as for instance, Oberthür, S. and Ott, H.E. (1999) demonstrated that state interests at stake were/are too high to simply act for the benefit of the community as a whole. In this sense, Hopmann recognized that "the bargaining approach focuses primarily on states [..] who have specific national interest to be achieved", (1995, p. 29).

[138] Hopmann, P. T., (1995), "Two paradigms of negotiation: bargaining and problem solving", *The Annals of the American Academy of Political and Social Science*, Vol. 542, No. 1, p. 24.

[139] *Ibidem*.

[140] Gulliver, P. (1979), as cited in Lewis, L.F and Spich, R.S, (1996), "Principled negotiation, Evolutionary Systems Design, and Group Support Systems: A suggested integration of Three Approaches to Improving Negotiations", *Proceeding of Hicss-29: 29th Hawaii International Conference on System Sciences*, 10603425/96, p. 238.

Schelling[141] adopted a similar perspective on the issue. He considered bargaining a synonym of negotiating, defining the process as an exchange of credible threats and promises, which if done properly (the actor's credibility is fundamental), will lead the other party to make concessions[142].

By using Habermas' contribution, Elster[143] gave a useful contribution in this respect. Yet, the author pointed out that while in a bargaining process parties look at their interests, when arguing, parties invoke either the good of the community or the scientific truth. As highlighted by Elster, in certain institutional settings it is possible to witness negotiations characterized by pure bargaining or pure argumentation. By contrast, in the context of climate change negotiations, it can be argued that governments' behavior and positioning were influenced by both scientific discoveries and their perceived and real interests.

In this respect, Elster's analysis is crucial, as he theorized the strategic use of argumentation. According to the author, beyond the arguing/bargaining dichotomy a third strategy to conduct negotiations exists, that is using argumentation strategically. In other words, this kind of approach consists on using apparently impartial reasoning, either for the benefit of the community or in the name of scientific truth, but in order to promote self-interest.

Considering that the climate change problem has been deeply subjected to scientific research and discoveries since the 1970s, academics argued that some sovereign states might have resorted to the so-called strategic use of argumentation conceptualized by Elster so as to corroborate their stance[144]. According to Oberthür and Ott's[145], this may be the case of the EU, which due to its high energy dependence, has historically attempted to reduce its energy consumption, particularly as far as its fossil fuel consumption is concerned. Therefore, the line of reasoning provided by Oberthür and Ott seems to suggest that the fight against climate change was not the only reason for the European involvement in climate negotiations.

Similarly, Andresen and Agrawala[146] suggested that the approach adopted by the EU during the climate negotiations was not only a reflection of the Union's concern for the environment, but

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[141] The author focused his analysis on the distributional act of bargaining, which entails that a better bargain for one party means less for the counterpart. Although Schelling never refers to it explicitly, the science behind the conception of bargaining is the game-theory, which considers the individual selfish and rational, with the sole aim of maximizing its benefits.

[142] Schelling, T., (1980), "An essay on bargaining", in *The Strategy of Conflict*. London: Harvard University Press, pp 21-52.

[143] Elster, J., (1999) "Arguing and bargaining in two constituent assemblies.", *University of Pennsylvania Journal of Constitutional Law*, Vol 2, No. 2, pp 345-421.

[144] Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, p. 52.

[145] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, pp 14-15.

[146] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 45.

also an opportunity to stand forth as a strong and unified block on the international panorama.

In order to provide a comprehensive analysis of the fundamentals of negotiations, the contribution given by Fischer and Ury[147] is noteworthy as well. The authors shed light on the importance of distinguishing positions from interests in order to reach a good agreement able to satisfy all parties. Although in certain cases the boundaries between these two categories may appear rather ambiguous, Fischer and Ury claimed that, when negotiating, their difference has always to be taken into account. Indeed, it was the first time that legal scholars focused their attention on such a contraposition in this context. Despite few veiled and occasional reservations can be noted[148], Provis[149] acknowledged that Fischer and Ury's study has been frequently employed by analysts concerned with negotiation dynamics. In other words, the *interest vs position* contraposition provided by Fischer and Ury appears to be widely accepted among the intellectual community.

The main idea is that in order to reach an agreement, parties have to concentrate on interests rather than positions. This is because when negotiating, the main problem does not regard a conflict over positions. Rather, the conflict concerns the opposition between each side's interests, namely needs, concerns, and fears. Obviously, this entails looking at the counterpart's interest, although it is not an easy task. Yet, while usually a position is hold in a concrete and explicit way, interests appear inconsistent, un-expressed, and almost intangible. In this regard, Fischer and Ury noted that positions can be evaluated, in the sense that each negotiator can choose the more suitable position to hold in a specific context. Conversely, interests can be considered as those factors that influenced the decision of holding a certain position. Interests comprise desires, concerns, everything that motivates actors. That is the reason why interests are described as "the silent movers behind the hubbub of positions"[150]. According to the authors, reconciling interests rather than positions is fundamental for two reasons. In the first place, it is very likely that behind opposing positions common interests exist. Indeed, in almost every negotiation, parties have got a host of interests and not just one, and communicate them to the other party increase the chances to achieve the desired outcome. In the second place, it has to be taken into account that, for every interest, an array of positions can be put into practice.

Fischer and Ury judged a fair agreement according to three main criteria: it has to be wise, efficient and has to improve or at least not damage the relationship between the parties. In this respect,

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[147] "Getting to Yes" was first published in 1918. For the scope of this study, it will be used is the second edition: Fisher, R., Ury, W., & Patton, B. (1991), *Getting to Yes: Negotiating agreement without giving in*. New York: Penguin Books.

[148] In "Interests: The Measure of Negotiation" by Lax and Sebenius (1986), authors stressed negotiator advisers' tendency to urge attention to the importance of interests, conceiving this suggestion as a surprising discovery of the twentieth century. Conversely, the authors pointed out that Socrates' admonition to "Know Thyself" preceded any advice of this sort. In addition to this, see Provis (1996).

[149] Provis, C. (1996), "Interests vs. Positions: A Critique of the Distinction", *Negotiation Journal*, Vol. 12, p. 305.

[150] Fisher, R., Ury, W., & Patton, B. (1991), *Getting to Yes: Negotiating agreement without giving in*. New York: Penguin Books, p. 24.

the authors argued that positional bargaining[151] fails to meet these criteria, and for this reason it should be perceived as a danger for the outcomes of a negotiation. Most importantly, when many parties are involved, as it happens in the climate change framework, positional bargaining might lead to deadlocks. Therefore, the authors suggested developing the principled negotiation[152] method, which invites parties to focus on interests as a central element of a negotiation.

Although Provis recognized the value of Fischer and Ury's analysis, he stressed the fact that when negotiating is not always possible to grasp the difference between interests and positions so as to take advantage from it. Furthermore, the author argued that in some types of negotiations, the role of positions is even crucial. For instance, in the case that one party represents a group, positional consensus is of utmost importance for its internal unity. According to Provis, reaching a good agreement requires parties to use a host of psychological concepts which, apart from interests and positions, it involves moods, beliefs, values, perceptions, motives and so forth. Therefore, the negotiator task is that of paying attention to whichever of these elements is most important according to the specific context[153].

The divergence of views on the crucial role played by interests and positions elaborated by the authors aforementioned are particularly relevant for the scope of this study, for they help to evaluate and explain the outcomes of the Kyoto Protocol. Reportedly, the key actors of the negotiating process, namely the US and the EU, followed two different paradigms while negotiating. Notably, unlike the EU, which opted for a strategic use of argumentation, the US demonstrated explicitly its willingness to safeguard national interests throughout the process.

Among the wide range of aspects worth of notice when dealing with international negotiations, it can also be included the influence played by external factors over governments' behavior. In this sense, it has to be reminded that the dependence on production and the use of fossil fuels varies greatly according to each country. As explained by Oberthür and Ott, this lays the basis for different "polluters interests"[154]. Obviously, in countries where polluter interests are dominant, governments are less eager to elaborate severe actions to curb GHG emissions.

Similarly, countries' vulnerability to the impacts of climate change varies as well, and with it, countries' interest in climate change mitigation and adaptation processes. Countries heavily affected by climate change problems are expected to foster and support the implementation of measures able

[151] In their analysis, the authors distinguished two styles of positional bargaining: hard and soft. However, both of them seem to be inadequate.
[152] Also labelled as *"negotiation on the merits".*
[153] Provis, C. (1996), "Interests vs. Positions: A Critique of the Distinction", *Negotiation Journal*, Vol. 12, p. 306.
[154] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 43.

to address these issues. Indeed, the availability of affordable options to reduce GHG emissions is crucial for certain countries.

Against this backdrop, it is worth pointing out that when negotiations started, industrialized countries were responsible of roughly three-quarters of the fossil fuel CO_2 emissions[155]. For this reason, and due to the low economic capacities of developing countries, it became soon evident that the industrialized world had to take full responsibility in the fight against climate change. Taking into account the wide range of implications illustrated in this section, it can be inferred that developing a common line of action to deal with climate change had been rather challenging during the Kyoto process.

2.3 Key actors and emerging coalitions in the run up to Kyoto.

Legal scholars provided several classifications of the countries involved in the climate change regime, and therefore, in the process that led to the adoption of the Kyoto Protocol. Notably, parties organized themselves in a number of different groups and coalitions. While some of them were coined in the framework of the United Nations, others were the product of ad hoc political alliances. Indeed, political alliances are not only based on common interests, but also on cultural, geographic and economic affinities.

This section aims at providing a comprehensive analysis of the main coalitions formed during the Kyoto process so as to counterbalance the European weight. In this respect, much emphasis is given to their features and interests for they are crucial to grasp the reasons that led them to oppose to the European approach. Furthermore, being the crucial actors of the Kyoto process alongside the EU, this section addresses the stances of both the US and the Japan.

Institutionally, a dividing line between the "North" and the "South" has always characterized international negotiations[156]. Indeed, especially in the context of climate change, the opposition between developing and developed countries is worth of notice[157]. Yet, when the Framework Convention was signed in 1992, countries were formally divided into three main groups according to their capacities and economic development.

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[155] Gupta, J. and Grubb, M.J. (2000) "Implementing European Leadership", in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 288.

[156] The UN provides a traditional though comprehensive classification of the parties, which is divided into five regional groups: African States, Asian States, Eastern European States, Latin American and the Caribbean States, and the Western European and other States, including Australia, Canada, New Zealand, Norway, and the US.

[157] Gupta, J. and Grubb, M.J. (2000) "Implementing European Leadership", in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 288.

Annex I Parties included both the OECD[158] countries and the economies in transition (the former Soviet bloc). Due to the huge economic resources of the former, Annex I Parties were expected to "take the lead"[159] in the fight against climate change since the very beginning by adopting national policies on mitigation as well as by limiting their GHGs. Similarly, Annex II grouped together Annex I parties except for the economies in transition. This distinction was made in order to specify an additional OECD obligation, providing financial resources to meet the costs incurred by developing countries in responding to climate change. Finally, Non-Annex I gathered together all developing countries.

In order to rebel against the structural dependence on the North, developing countries grouped together under the umbrella of the "G77 plus China". Considering that climate change has been mainly caused by industrialized countries, the group wanted to avoid being socially and economically affected by stringent climate change measures. Indeed, per-capita emissions of CO_2 and other GHGs in developing countries were far below the global average. Nowadays, the G-77 includes 134 members[160], which makes it the largest negotiating coalition in the UN system. The group split publicly just once, at the COP-1 in 1995, when a smaller coalition of developing countries joined the newer "Green Group" with the aim of drafting the text to lay the basis for the "Berlin Mandate"[161].

As pointed out by legal scholars[162], it has to be stressed that a massive diversity of interests are assembled under the roof of the G-77. For this reason, a further distinction within this coalition is worth of notice. In this context, legal scholars identified three main groups: the Alliance of Small Island States (AOSIS), the Organization of Petroleum Exporting Countries (OPEC), and the group of African Countries[163].

The AOSIS group, established in November 1990, consists of a coalition of 39 low-lying coastal states and small islands spanning across the Pacific, Indian and Atlantic Ocean[164]. Considering that their territories lie only a few meters above the sea level, they are highly vulnerable to climate change. For instance, the increased frequency of hurricanes and cyclones as well as coral bleaching have represented a concrete menace to the very existence of some of these countries. Since its inception, AOSIS has been extremely active in the climate change regime, exerting constant pressures to strengthen industrialized countries' emission reduction targets. Most importantly, in 1994, AOSIS

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[158] The acronym stands for "Organization for Economic Cooperation and Development".
[159] As enshrined in article 4 of the UNFCCC.
[160] http://www.g77.org/doc/members.html last visit on 20/01/2019.
[161] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, p. 35.
[162] See Farhana Y and Depledge, J, (2004), Gupta, J and Grubb, M.J. (2000), Oberthür, S. and Ott, H.E. (1999).
[163] To be fair, it has to be noted that countries like Brazil, China and India have taken a more individual stance within the G-77. For the scope of this paper their position will not be explored.
[164] AOSIS official website counts 39 members plus 5 observers: American Samoa, Netherlands Antilles, Guam, US Virgin Islands, and Puerto Rico. http://aosis.org/about/members/ last visit on 04/02/2019.

put forward the first draft text of the Protocol, which proposed a 20% reduction of GHG emissions within 2005 to be fulfilled by Annex I countries[165]. Within the G-77, OPEC[166] placed itself almost in opposition to AOSIS. The organization was created in the 1960s by five oil-producing exporters countries[167] with the aim of guaranteeing and protecting their interests, which had been for long exploited by Western governments and their multinational corporations.

During the 1970s OPEC countries used to possess oil markets' control. However, circumstances got worse when in the 1990s the international community became aware of the urgent need to limit CO_2 emissions. Against this backdrop, OPEC countries started to be extremely concerned about a further decline in their fortunes, fearing that the implementation of stringent measures would provoke higher level of taxation. In their defense, they put great emphasis on the uncertainties of scientific discoveries, and blamed the EU for taking a hypocritical and anti-oil stance merely because they could rely on German coal subsidies[168].

On the whole, the OPEC position appeared rather evident since climate negotiations started to take place. Indeed, the proposals submitted at the international level were considered a real threat to their energy resources and production[169]. As a matter of facts, the G-77 countries eventually decided to negotiate without the oil exporting countries. In 1995, a new coalition was formed, the so-called "green G-77" group. The coalition aimed at counterbalancing the influence of Annex I parties, which apart from the EU, included another key though informal coalition, the JUSSCANNZ[170] group. JUSSCANNZ became the major opponent of the EU in the Kyoto process. Yet, despite holding diverse positions on specific issues, these countries commonly agreed on a firm opposition to the stringent commitments proposed by the EU.

The United States deserves a special mention. Apart from being the most powerful member of JUSSCANNZ, it became - alongside the EU - the main protagonist of climate change negotiations. Due to its political and economic weight, the US placed itself as a key player in the run up to Kyoto, or at least, this is what the internationally community was expecting when negotiations started in the early 1990s. Yet, the US was the world's largest producer of coal, oil and gas, and at the same time,

[165] See FCCC/AGMB/1996/MISC.2.
[166] https://www.opec.org/opec_web/en/about_us/24.htm
[167] OPEC was established in occasion of the Baghdad Conference (10-14 September 1960) by Iran, Iraq, Kuwait, Saudi Arabia and Venezuela.
[168] Gupta, J. and Grubb, M.J. (2000) "Implementing European Leadership", in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands, Kluwer Academic Publishers, p. 293.
[169] For data on energy production and reserves in Arabic OPEC members see IEA (1990s).
[170] Over the years, the acronym has been subjected to different variations for some members went out from the informal coalition while other entered it. The full acronym refers to Japan, United States, Switzerland, Canada, Australia, Norway and New Zealand. In addition to them, Iceland and South Korea occasionally participated in the JUSSCANNZ meetings.

a net importer of energy products[171]. Taking the 1990s as our point of reference, it was estimated that US emissions amounted roughly to a 25% of the global total emissions[172]. Being one of the world's highest per capita as well as absolute emitters, the international community was expecting its active involvement for the implementation of a proper and far-reaching strategy that could tackle climate change. Instead the US held a rather hesitant position, demonstrating to be much more concerned about the economic consequences of CO_2 abatement.

In this respect, legal scholars argued that a huge US opposition to measures that would entail a limitation on the use of fossil fuels or an increment in their cost, would have been quite inevitable. As brutally claimed by Rayner "the history of US energy demand and the existing resources, infrastructure and institutions make the US economy as dependent upon fossil fuel as a heroin addict is on the needle[173]".

Apart from the perceived costs of a successful climate policy, another crucial factor when considering the US stance in the fight against climate change is the great influence exerted by lobby groups[174] at the institutional level. Yet, it has to be noted that the fossil fuel market has been traditionally dominated by a small number of big companies[175], and this in turn facilitated an effective organization of industry interests. Indeed, business NGOs have always provided financial support to the US, and its dependence on them cannot be denied.

Additionally, it has to be stressed that the way in which the US political system is shaped enabled lobby groups to get access to policy-makers. As for the EU, non-governmental and public international organizations can exert great influence over governmental actions by providing information and advice, making policy recommendations, and sometimes by direct lobbying. When negotiations on climate change started, business NGOs were evidently much more concerned about the economic impact on their business caused by the impelling implementation of stringent measures[176].

Even though the dynamics illustrated had a great impact in defining climate change US stance, it would be too simplistic to depict the US position as monolithic. For instance, it is worth reminding

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[171] Data refers to the 1990s. Nowadays, China GHG emissions exceed those of the US. However, together with China and the EU, the US is still one of the main GHG emitters in the world. Data available at: https://www.wri.org/blog/2017/04/interactive-chart-explains-worlds-top-10-emitters-and-how-theyve-changed

[172] Data reported pertains to the analysis of Gupta, J. And Grubb, M.J. (2000). Data provided by Oberthür, S. and Ott, H.E. (1999) are quite similar. For specific data of US' GHG emissions since the 1990s, check EPA website.

[173] Rayner, S., (1991) as cited in Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 19.

[174] When international negotiations on climate change started, the Global Climate Coalition was one of the most influential lobbyist groups. Indeed, it played a crucial role in blocking US ratification of the Kyoto Protocol.

[175] As for instance the Exxon Corporation, Mobil, Sun Oil, etc.

[176] Notably, the power exerted by lobbies became even more evident when the Bush administration came into office in January 2001. On March 28th President Bush announced that the US would not implement the Kyoto Protocol as it represented a serious harm to the US economy.

that the IPCC was established under the auspices of the US, which along the years kept being at the forefront of scientific research and analysis. Moreover, it has to be taken into account that the US counts with a high number of environmental NGOs, which have always attempted to raise awareness on environmental issues at the governmental level.

Being the host of the Kyoto conference and a JUSSCANNZ members, the position of Japan is worth to being mentioned as well. Even though Japan was institutionally closely allied to the US, since the 1990s it demonstrated to be more European oriented as regards the impelling need of reducing GHGs emissions. Yet, the country adopted a delicate worded to two-tier CO_2 emission target and, being the host of Kyoto negotiations, it proved to be rather concerned with its target achievements. When international debates over climate change started to take place, Japan presented itself as a mature and responsible international player, eager to give its contribution for a sustainable twenty-first century[177]. Furthermore, as argued by Gupta and Grubb[178], considering the completely dependence of the Japanese economy upon fossil fuels, the country perceived CO_2 constraints as an opportunity to foster energy conservation, encouraging the implementation of policies that could in the long-term lead to the exploitation of renewable resources. In other words, since the early phases of negotiations, Japan had a clear interest in bringing the Kyoto Protocol into force as sooner as possible.

In the final stages of the Kyoto negotiations, Russia (and Ukraine too) joined discussions and aligned with the JUSSCANNZ countries, forming the "Umbrella Group"[179]. Actually, the group only emerged in 1997 at COP-3, right after the adoption of the Kyoto Protocol. Similar to the JUSSCANNZ, the Umbrella Group emergence has to be attributed to the countries' willingness to oppose the EU's attempts to restrict the use of flexibility mechanisms, especially emissions trading[180]. In the climate change framework, it is considered the youngest and loosest coalition that was formed to counterweight the EU and its negotiating position. Basically, the key difference between the Umbrella Group and the JUSSCANNZ is that in the former Switzerland is not taken into account, as its position on the flexibility mechanisms became much closer to the EU.

It is worth noting that in this group there are no formal structures, no Secretariat and no chart. As highlighted by Gnaś, even though these countries have a tendency to confront themselves

[177] Gupta, J. and Grubb, M.J. (2000) "Implementing European Leadership", in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands, Kluwer Academic Publishers, p. 290.
[178] *Ibidem.*
[179] The group comprises Australia, Belarus, Canada, Iceland, Israel, Japan, New Zealand, Kazakhstan, Norway, the Russian Federation, Ukraine and the US.
[180] Gnaś, H., (2014*)* "The Kyoto Protocol and the JUSCANNZ/Umbrella Group Countries – Party and Political System-Conditioned Determinants", *Annales Universitatis Mariae Curie-Sklodowska*, Lublin, Polonia, Vol. XXI, No. 1, p. 24.

regarding the interests they share, no agreements on common statements were made[181].

As for JUSSCANNZ, national circumstances within the Umbrella Group differ considerably, thus interests are far from being homogeneous. For instance, Scandinavian countries, Japan, and New Zealand were defined as low per capita emitters due to their higher levels of energy efficiency. In particular, Iceland and Norway have traditionally adopted a more environmental perspective, being more sympathetic to developing countries' concerns with respect to the US. Conversely, Canada and Australia have been more concerned with their demand for flexibility in the implementation of their Kyoto targets, asking for individual concessions as well[182].

Overall, the divergent needs and positioning presented by states members pertaining to the Umbrella group led inevitably to conflicts on various levels. Even though state parties decided to group together in order to counterbalance the European weight, they had to deal with the Kyoto Protocol's complexities individually. In this respect, Gnaś observed in detail the dynamics that affected each of these countries[183]. He distinguished the various phases that led to the entry into force of the Kyoto Protocol, namely negotiations level, ratification level, implementation level, and "withdrawal"[184] level. As far as the negotiation phase is concerned, namely the focus of this study, Gnaś noted that on the eve of COP-3 the US strove for reaching a common line of action that could reconciling the Republican Party with the Democratic one as well as the host of industrial and business groups. In this sense, Gnaś reasoning appears perfectly in line with Putnam's argumentation. Skepticism regarding the US involvement to the Protocol exacerbated even more during the Bush administration. Yet, it is worth reminding that unlike the other Umbrella Group members, the Bush administration eventually refused to ratify the agreement and eliminated the signature previously put by the Clinton administration. Indeed, the US refusal represented one of the most challenging moments not only for the whole of the international community, but also for the EU that saw its efforts for bringing the Kyoto Protocol into force seriously invalidated. Yet, based on provisions in the UNFCCC, for the Protocol to be implemented, it was necessary that industrialized countries pertaining to Annex I ratified the agreement reaching at least 55% of the total carbon dioxide

[181] Gnaś, H., (2014), "The Kyoto Protocol as a Determinant of International Cooperation", *Polish Political Science Yearbook*, Vol. XLIII, p. 258. Actually, Yamin, F., and Depledge, J., (2004), recognized that common submissions and statements were effectively put forward by the Umbrella Group. Nonetheless, their line of reasoning regarding the meaning of "loose coalition" remains the same. Yet, the authors acknowledged that group members are free to pursue their specific interests.

[182] Yamin, F., and Depledge, J., (2004) *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, pp 45-46.

[183] Gnaś, *H*. (2014), "The Kyoto Protocol and the JUSCANNZ/Umbrella Group Countries – Party and Political System-Conditioned Determinants", *Annales Universitatis Mariae Curie-Sklodowska*, Lublin, Polonia, *Vol. XXI, No.1*.

[184] With great astonishment for the international community, in 2011 Canada announced its withdrawal from the Kyoto Protocol.

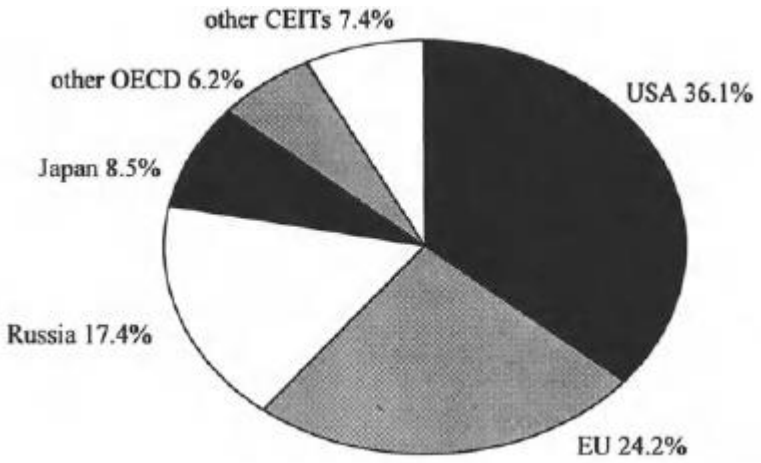
emissions for 1990. In 2004, Russia (alongside Canada) ratified the Protocol bringing the treaty into effect on 16 February 2005, several years after the Protocol was signed.

2.4. The EU and its fight against climate change.

The following sections provide a comprehensive analysis of the EU and its position in the international community as a regional organization. Given the fact that climate change is a global issue, the aim of the following sections is to assess the way it dealt with the fight against climate change during the 1990s. The EU possesses a notable degree of actorness, and over the decades it gained particular relevance in the international scenario. Therefore, it has been formally recognized as an international actor in the climate change regime. Notwithstanding, it remains a regional organization comprising, at the time of Kyoto negotiations, 15 members. For this reason, some academics defined the Union as a real coalition, while others conceived it as a "collection of states". Indeed, since the fight against climate change started, member states gave substantial support to the Union. Notably, as illustrated in the last section, some more than others.

2.4.1 The EU: a massive greenhouse gases emitter.

In 1990, the EU accounted for a 24.3% of CO_2 emissions, which corresponded to a 15-16% of global CO_2 emissions[185]. Indeed, alongside other OECD countries such as the US and Japan, the EU comprised some of the highest emitting countries in the world.



[185] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 14.

Figure 2.1: Contribution of Major Players to Total CO_2 Emissions of Industrialized Countries in 1990. Source: Oberthür, S. (2010), *The New Climate Policies of the European Union: Internal Legislation and Climate Diplomacy*. Brussels: Brussels University Press, pp 15.

Within its borders, Germany, France, the UK, and Italy stood out as the major GHGs emitters. Notwithstanding, as discussed forward, the contributions given by these states during the Kyoto negotiations differed considerably. Firstly, because despite being part of the same organization, countries are characterized by different endogenous factors, and secondly, because as a consequence of this, different policy legislations have been developed at the national level.

Country	$C0_2$ reduction target (%)	1990 emissions (Million tonnes of CO_2)		
		% EU	Per capita	Total
Belgium	-5 (2000,1990)	4.0	11.2	112*
Denmark	-20 (2005,1988)	1.8	9.9	51*
France	stabilization at 2tC/cap	13.2	6.5	366*
Germany (West)	-25 (2005,1987)	25.5	11.3	709
Greece	+25 (2000,1990)	2.7	7.4	74*
Italy	0 (2000,1990)	14.4	6.9	400
Ireland	+20 (2000,1990)	1.1	8.8	31
Luxembourg	0 (2000,1990)	0.5	35.1	13*
Netherlands	-3 to -5 (2000,1989)	6.6	12.2	182
Portugal	+29 to 39 (2000,1990)	1.4	4.1	40
Spain	+25 (2000,1990)	7.6	5.4	211*
United Kingdom	0 (2000,1990)	21.1	10.2	587

Figure 2.2: EU CO_2 emissions: 1990 levels. Source: Grubb, M., (1995) 'European Climate Change Policy in a Global Context', in Helge O le Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development.* Oxford: Oxford University Press, pp 45.

On the whole, the Union has been a massive importer of fossil fuels. In the 1990s[186], it was reported that roughly only half of its energy demand managed to be satisfied by internal EU production. Following this trend, it was calculated that without the implementation of effective policy changes,

[186] It has to be stressed that this is the period taken into account for the scope of this study. Yet, data refer exclusively to the 1990 decade. Obviously, due to a wide range of factors and events data keep changing, so they may differ from those of nowadays. However, it seems that currently, EU dependence on energy imports keeps being the same. See https://ec.europa.eu/eurostat/cache/infographs/energy/bloc-2c.html. Last visit on 14/02/2019.

energy domestic demand would rise to 55-70%[187]. Indeed, it cannot be denied that traditionally some EU members have been coal producers. For instance, especially in the 1980s, the UK was considered one of the main oil and gas producers, since it has largely taken advantage from its North Sea fossil fuel reserves. Nonetheless, experts confirmed that the availability of UK fossil fuel reserves are gradually decreasing[188]. Furthermore, it has to be taken into account that production costs in this sector are extremely high.

Against this backdrop, it appears obvious that reducing energy consumption became one of the greatest concerns of the EU, and the fight against climate change became a perfect combination to protect the environment and achieve one of its core objectives. Since the oil price shocks of the 1970s and early 1980s, the Union has aimed at promoting the sustainable development of its energy sector as well as enhancing energy saving. Northern EU countries had already invested on the development of renewable energy and energy-efficient technology since the late 1970s, obtaining very good results. Yet, by looking at 1990 GHGs emissions data, it is possible to note that no Scandinavian country appear on figure 2.1. Indeed, Nordic countries served as an example for the development of a European climate policy framework much oriented towards the use of renewable sources.

Apart from the impellent necessity to reduce its dependence on fossil fuel reserves, it is worth stressing that numerous European environmental groups have tried to raise awareness on the forthcoming impacts of climate change on the region. By the 1990 decade, the scientific community had largely proved the correlation between human activities and extreme weather events. In absence of prompt mitigation strategies, experts concluded that all European regions would be heavily damaged[189]. Sea-level rise, floods, droughts, reduction in forest growth were only the most direct consequences predicted, not to mention the variety of economic sectors such as agriculture, transportation, and industry at risk of being affected.

In sum, the aforementioned factors worked as incentives for the overall mobilization of the EU towards the climate change issue.

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[187] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 14.

[188] https://www.statista.com/statistics/331958/proved-reserves-of-oil-in-the-united-kingdom-uk/, last visit on 14/02/2019.

[189] The European Environment Agency (EEA) provides detailed indicators in this context. Check https://www.eea.europa.eu/.

2.4.2 The EU: an international actor in the climate change regime.

This paragraph aims at exploring the EU actorness' foundations. In order to do so, academics employed a wide range of factors which are crucial to understand how the Union, as a regional organization, succeeded in imposing itself in the international scenario, and most importantly, how it began to interact with the other sovereign states of the international community. Indeed, for the Union to be recognized as a leader in the climate change regime, it is first necessary to exert a certain degree of influence as international unitary actor[190].

Among the experts that focused on the EU as a unitary international actor, Sjötedt[191] defined the Union as "a genuine actor in the international actor"[192] and specified that the degree of actorness depends on the actor's capability to provide its contribution on a given issue area.

Bretherton and Vogler[193] conceived the EU as an actor "under construction", arguing that its degree of actorness depends on a complex range of interacting processes. Notably, the authors focused on the notions of *opportunity*, *presence*, and *capability*, arguing that if properly combined these features would lay the basis for EU activities. O*pportunity* refers to the structural context of action, and denotes the set of ideas and events that favor EU actorness. This means that opportunities define the potential environment in which the EU has the chance to exert its role of international actor. *Presence* denotes the EU capacity, given its existence, to take advantage from these opportunities so as to exert its influence beyond European borders. Finally, *capability* represents a factor of internal nature, since it refers to the range of policy instruments that the EU has at its disposal, and at the same time the Union's ability to exploit such instruments at its advantage.

Overall, the basic assumption behind the authors' reasoning is that being the EU an evolving entity, its presence in the international scenario varies according to the issue-area addressed. This in turn means that the EU degree of actorness is not fixed, and cannot simply be expressed in a single definition. Rather, it always necessitates a case-by-case assessment. In addition to the contribution provided by Bretherton and Vogler, the investigation conducted by Jupille and Caporaso[194] in this context is worth of notice. Similarly, the authors attempted to assess the degree at which the EU can be conceived as an international actor. In order to do this, four strictly interrelated criteria were

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[190] Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, p. 37.
[191] See Sjötedt (1977).
[192] Sjötedt (1977), as cited in Pavese, C.B. and Torney, D. (2012), "The contribution of the European Union to global climate change governance: explaining the conditions for EU actorness", *Rev. Bras. Polít. Int.*, No. 55, p. 126.
[193] Bretherton, C. and Vogler, J. (2006), "Conceptualizing actors and actorness", in *The European Union as a Global Actor*. London: Routledge, pp 12-36.
[194] Jupille, J. and Caporaso, A.J, (1998), "States, Agency, and Rules: The European Union in Global Environmental Politics" in Rhodes, C. *The European Union in the World Community*. Colorado: Lynne Rienner Publishers, pp 214-220.

identified: *recognition*, *authority*, *autonomy*, and *cohesion*.

External *recognition* has been described by the authors as a minimum condition for the existence of an actor in the international scenario as well as the *sine qua non* of global actor-hood. In this sense, Jackson[195] even argued that full recognition alone - without taking into account any other criteria - would be sufficient to determine international actor-hood. Thus, *recognition* is of utmost importance as it testifies third parties' acknowledgement of the actor's participation in world politics. *Recognition* can take place in two different ways, either *de jure* or *de facto*. The former involves diplomatic recognition, and is formalized by the international law. Indeed, diplomatic recognition is not problematic as it is automatically conferred on states. In this respect, Jupille and Caporaso stressed the fact that despite continuous interactions with most countries of the international community, the EU has not been endowed with the same status as sovereign states. This is because third parties have been rather reluctant to fully recognize the EU, since especially before the 1990s, it has not been clear whether the competence to deal with a specific issue belonged to the Union or to the member states. Nonetheless, despite its centrality, sovereignty status is not a necessary condition for global political actor-hood to achieve recognition. Moreover, as explained before, *de jure recognition* is not the only feasible option. Yet, according to the authors, EU interactions with third parties - being them bilateral, regional or global - set in motion a sort of socialization process that contributes to form EU identity, and most importantly, to validate its recognition as an international actor.

In this sense, Brewin[196] argued that the Union gained particular relevance in the international scenario when its legal powers started to increase. Notably, in his opinion the creation of the internal market pushed third states - especially since the 1970s - to negotiate with the EU as an autonomous actor. As regards *authority* - the second factor taken into account by Jupille and Caporaso - it refers to the EU capacity to act externally as an international actor. Being the EU a creation of its member parties, EU *authority* is the result of a delegation process which transferred legal power and competences possessed by nation states to EU institutions[197]. *Autonomy*, the third element of actorness, is strictly interrelated to *authority*, due to the fact that it entails institutional

[195] Jackson and Rosberg (1982), (1986), as cited in Jupille, J. and Caporaso, A.J, (1998), "States, Agency, and Rules: The European Union in Global Environmental Politics" in Rhodes, C. *The European Union in the World Community*. Colorado: Lynne Rienner Publishers, p. 215.

[196] Brewin (1987) as cited in Jupille, J. and Caporaso, A.J, (1998), "States, Agency, and Rules: The European Union in Global Environmental Politics" in Rhodes, C. *The European Union in the World Community*. Colorado: Lynne Rienner Publishers, p. 216.

[197] Article 3 TFEU enshrined EU exclusive competences. Notably, Article 3.2 established that "the Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".

distinctiveness[198] as well as a certain degree of independence from the other actors, in this case from state actors. As far as *cohesion* is concerned, the authors perceived it as the collective capacity to develop and convey policy preferences. In this sense, the authors specified that *cohesion* is an ambiguous term, since it does not necessarily imply substantive agreement on values and goals. Notwithstanding, whenever member states manage to formulate policies despite the divergent perspectives, it is possible to talk about "*output cohesion*".

Overall, by taking into account the factors aforementioned, Jupille and Caporaso concluded that the EU possesses a notable degree of actorness, which fosters and strengthens its presence in the international scenario. Despite the valuable contribution of their analysis, it is worth stressing that in order to assess EU degree of actorness, the authors adopted a wide-ranging perspective. Hence, it did not focus specifically on the environmental regime.

By contrast, Pavese and Torney[199] focused on EU actorness in the climate change regime, and argued that the Union has been formally recognized as an international actor in this domain. In this respect, the authors claimed that both a *de jure* and *de facto* recognition occurred. The former is testified by the fact that article 22 of the UNFCCC allowed the so-called Regional Economic Integration Organization (REIOs) to take part to the climate change regime in the same terms as states. The latter, in accordance with Jupille and Caporaso, is confirmed by the EU engagement with third parties that takes place namely in negotiation rounds.

2.4.3 The European coalition in the fight against climate change.

Being the world's most ambitious experiment in regional integration, the EU was not simply defined as an international actor by academics, but also as one the most cohesive negotiating coalitions[200]. Following the line of reasoning provided by Yamin and Depledge[201], it can be argued that the EU coalition for the fight against climate change definitely consolidated in 1995, when Finland, Sweden and Austria officially joined the organization. At that time, the EU consisted of fifteen member states which, alongside the Commission, committed to articulate a common position by speaking with a single voice[202]. Hence, on the eve of Kyoto negotiations, the EU had the potential power to negotiate

[198] According to the authors, "*institutional distinctiveness*'' means that in order to be identified as an actor, an international organization must dispose of a distinctive institutional apparatus.
[199] Pavese, C.B. and Torney, D. (2012), "The contribution of the European Union to global climate change governance: explaining the conditions for EU actorness", *Rev. Bras. Polít. Int*, No. 55, p. 129.
[200] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures.* Cambridge: Cambridge University Press, p. 42.
[201] *Ibidem.*
[202] Each country holds the Presidency of the Union for 6 months. During this period, the President is empowered of co-ordinating the members and presenting the EU position at the international negotiations.

on behalf of fifteen countries, among which the votes of four powerful G-7 countries stand remarkably out[203].

Given the Union's internal interactions, fostered by an established communication structure, some scholars have conceived the EU as a "collective actor"[204]. Obviously, considering the divergent political cultures, energy mixes and other individual circumstances, it has not always been simple for the EU to speak with a single voice. For instance, the EU limited competence in energy policy has represented an important factor of complexity for the Union. Notwithstanding, as claimed by Gupta and Van der Grijp, given the European competence to make policies in the areas of trade, tax and foreign affairs, "no other comparative coalition of countries in the world"[205] exist.

By investigating the role played by the EU in the international scenario, Gupta and Van der Grijp observed the numerous strengths that contributed to make the Union a powerful coalition. In the first place, the authors highlighted the fact that EU countries find themselves in a unique situation because the implementation of measures and policies adopted at the European level affect all member states, and thus, whether we refer to the EU as a coalition, the whole of it. Indeed, this can be considered a crucial feature that distinguishes the EU from JUSSCANNZ countries as well as other coalitions. Yet, despite having in common a strong willingness to defend their interests from European threats, JUSSCANNZ countries were not institutionally bound, and could act independently. Also, it is worth taking into account that the historic evolution of power within the EU gave to the organization the competence to harmonize laws on environmental, energy and transport issues that are the key areas of climate action. Since the 1990s, the EU showed its willingness to invest up-front by adopting concrete measures, and demonstrated its ability to achieve higher efficiency levels. Indeed, despite its complex three-level game, since the beginning of climate change negotiations, the EU has received support from its member states. This is neither the case of JUSSCANNZ, nor the case for instance of federal governments such as Canada and the US, where, as explained, policy implementation proved to be particularly challenging even at the national level.

In this sense, there is a wide acceptance among academics that in the UNFCCC framework, EU members demonstrated a consistent and political will to develop a far-reaching environmental agenda, which included a wide range of new proposals and ideas. Notably, the European approach to climate change issues appeared rather constructive, and more cohesive with respect to JUSSCANZZ

[203] The Group of 7 was founded in 1997, and comprises Canada, France, Germany, Italy, Japan, the United Kingdom and the US.

[204] Jupille, J., and Caporaso, A.J, (1998), "States, Agency, and Rules: The European Union in Global Environmental Politics" in Rhodes, C., *The European Union in the World Community*. Colorado: Lynne Rienner Publishers, p. 214.

[205] As cited in Gupta, J., and Van der Grijp, N., (2000), "Strengths, weaknesses, opportunities, and threats of the EU", in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 264.

countries[206]. Another peculiar feature of the EU (which contributes to explain its special role in global society) refers to its longstanding relationship with the other blocs, namely the developing countries as well as the former soviet bloc[207]. Yet, in the UNFCCC framework, the EU strove for finding a common ground that could also take into account the problematics of less developed countries[208].

On the whole, in the run up to Kyoto, the EU did not impose itself simply as an international actor, but also as a cohesive coalition in opposition to JUSSCANNZ countries and the G-77 group. In fact, Schreurs and Tiberghien[209] argued that "the EU can be viewed as both an arena for Member States to negotiate with each other and an actor in its own right in the international climate change negotiation". In this case, the main assumption to consider is the fact that environmental policy is an area of shared competence, where both the Commission and member states, having joint competences, have the right to participate to climate change negotiations.

Following a similar line of reasoning, Jupille and Caporaso paid much attention on the EU collective nature, by claiming that among numerous definitions, the EU can also be conceived as a "collection of states"[210], whose interactions are guided by a minimal set of rules. Similarly, Schreurs and Tiberghien[211] argued that in the European context "countries are in many ways like sub-states actors in a federal system". In this sense, it is worth pointing out that apart from the crucial role played by EU institutions, many climate change initiatives have been pioneered by individual states. Likewise, it has to be stressed that when negotiating at the international level, member states coordinate their strategies with the Commission, which together with the current EU Presidency, form the so-called EU Troika. Notably, the EU Presidency, which is responsible for taking the lead, rotates every six months, thus giving the possibility to the State in charge to exert considerable influence in negotiations[212]. At COP-3, the EU Presidency was held by Luxembourg. Nonetheless, due to its limited capacity, Netherlands (its predecessor), and the UK (as Luxembourg's successor) took the lead of the EU Troika[213].

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[206] *Ibidem.*

[207] As already illustrated, this relationship consolidated in 2004, when several countries pertaining to the former Soviet Union joined the EU.

[208] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, p. 43.

[209] As cited in Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 24.

[210] Jupille, J., and Caporaso, A.J, (1998), "States, Agency, and Rules: The European Union in Global Environmental Politics" in Rhodes, C., *The European Union in the World Community*. Colorado: Lynne Rienner Publishers, p. 213.

[211] As cited in Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 36.

[212] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures*. Cambridge: Cambridge University Press, p. 43.

[213] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 86.

2.4.4 The EU as a "collection of states".

The contribution given by EU northern countries has been evident since the beginning of climate change negotiations. In the 1960s, Finland, Iceland, Norway, Sweden, and Denmark established the Nordic Council of Ministers (NCM), which is the official body for inter-governmental co-operation in the Nordic region. This alliance proved to be of utmost importance to deal with climate change issues. Since the early 1990s, NCM has provided detailed reports on the use of economic instruments in the five Nordic countries, thus providing inspiration for future policy-making. Especially from the second half of the 1980s, Nordic governments started to make substantial use of taxes and subsidies so as to regulate environmental externalities and, most importantly, to push industries to reduce their harmful activities[214].

As regards the introduction of taxes, it has to be highlighted that Nordic countries were the first in the world to make use of them as a tool for environmental protection. That is to say that Northern countries committed to elaborate effective environmental tools long before climate change negotiations took place at the international level. Denmark joined the EU in 1973, becoming one of the leading countries in the fight against climate change at the European level. Indeed, its performance is worth of notice especially as far as the development of renewable energies is concerned. Yet, together with the other Nordic countries, one of the main concerns of Denmark has been that of promoting renewable energy sources, thus increasing its share of renewable energy. In order to pursue its political goal, since the 1992, the Danish government has introduced different subsidies schemes, resorting to wind power, solar cells, and biogas. Notably, by taking advantage from the country's climate favorable conditions, Denmark managed to become a wind power pioneer in EU. In addition to this, it has to be stressed that the country undertook one of the largest per-capita reduction targets among EU countries, showing its firm commitment in the Kyoto process. Already in May 1990, the Danish government had established that CO_2 emissions needed to be reduced by 20% within the year 2005, with respect to the 1988 levels[215]. The ambitious target further increased when the EU burden-sharing agreement required the country to reduce its GHGs emissions by 21% against the 1990 level within 2008-2012, namely the first commitment period of the Protocol[216]. In this context, the introduction of taxes ranging from those on mineral oil, gas, coal, to those on CO_2, energy, and electricity played a crucial role for the achievement of Denmark's GHGs emission reductions.

As illustrated, especially during the 1990s the Danish government made use of a wide range

[214] Svenningsen, S.L., Sørensen, M.M., Hansen, L.L., Hansen, T., Schou, J., and Lone, Ǿ., (2018) "Policy brief: The use of economic instruments in Nordic environmental policy 1990-2017", Nordic Council of Ministers, http://norden.diva-portal.org/smash/get/diva2:1264812/FULLTEXT01.pdf last visit on 21/02/19.
[215] http://folk.uio.no/kristori/prosus/susnordic/denmark/national_policies/climate_energy.htm last visit 21/02/19.
[216] https://www2.dmu.dk/1_Viden/2_miljoe-tilstand/3_luft/4_adaei/Progress_toward_tagets_en.asp last visit 21/02/19.

of taxes, which were applied in disparate fields. In this respect, it is worth reminding that when on the eve of the 1992 UNCED Conference, the Commission proposed to implement a combined carbon/energy tax at the European level, most EU members firmly opposed to it. Denmark represented the only exception to this skepticism, which decided to implement the tax within its borders. In 1993, a CO_2 tax was placed on Danish industrial enterprises. Moreover, according to EU legislation, taxes were also introduced on consumer goods that caused pollution, including motor vehicles, tobacco and alcohol[217].

In 1995, also Finland and Sweden became part of the Union, further consolidating the EU coalition on the eve of Kyoto negotiations. Like Denmark, Sweden laid the basis for its environmental pioneer role between the 1960s and the 1970s through a wide range of proactive moves. Yet, already at the time, the Swedish government recognized that limited natural resources were gradually deteriorating, and realized that it was a country's responsibility to take care of them. For this reason, in 1967 the Environmental Protection Agency (EPA) was established in the country. The organization was made responsible for a broad spectrum of environmental issues. Apart from promoting the sustainable development of society, EPA has played a central role to reduce climate change effects and, at the same time, to find ways to reduce GHGs emissions. Being Sweden's central environmental authority, EPA has cooperated with numerous working groups both internationally and within the EU, demonstrating the country's propensity to act in accordance with EU institutions[218].

The Swedish commitment in the field was also confirmed in 1972, when the country hosted the UN's first major conference on international environmental issues, which led to the creation of the United Nations Environment Programme (UNEP). The climate change strategy developed in Sweden included a variety of policy instruments, which were either implemented through national initiatives or, since 1995, as a consequence of EU strategies. As the other Nordic countries, Sweden made large use of taxes. Already in 1991, the country adopted a carbon dioxide tax, becoming one of the first countries in the world to do so. Among all policy instruments, the carbon dioxide tax has been fundamental to pursue the reduction of Swedish emissions, although it has to be stressed that country's emissions were already modest at that time. Yet, data confirmed that they could not be compared to those of other EU countries, as for instance Germany[219]. As highlighted by Schreurs and

[217] Rasmussen, E. and Jørgensen, (2005), "Denmark's Climate Change Policy Objectives and Achievements", Denmark's report on demonstrable progress in 2005 under the Kyoto Protocol, Danish Environmental Protection Agency, Schultz, Copenhagen. https://unfccc.int/resource/docs/dpr/den1.pdf. Visited on 21/02/19.
[218] https://www.naturvardsverket.se/Documents/publikationer/978-91-620-8384-7.pdf. Last visit on 21/02/19.
[219] On the eve of Kyoto negotiations, Sweden was even allowed to increase its GHGs emissions of 4%. However, when Kyoto negotiations ended, the burden-sharing agreement was renegotiated among member states, and Sweden decided to be more ambitious by reducing its GHGs emissions of 4% during the first commitment period.

Tiberghien[220], even combining the emissions of small states such as Austria, Belgium, Denmark, Finland, and Luxemburg, it would not have been possible to reach those emitted by Germany in the early 1990s. However, EU northern countries were not the only actors to provide valuable examples on how dealing with climate change challenges.

Germany turned out to be one of the leading industrial countries in the fight against climate change. Yet, scholars argued that during the decades the country managed to become a key player in both international and European climate change policy. Notably, the Federal Government also played an important role in the implementation of renewable energy policies. To be fair, when in the 1960s modern environmental policy started to develop, Germany pertained to the laggards countries, while others such as the US, Japan, Sweden, and (to some extent) even Great Britain, had already begin to establish new environmental institutions, elaborate instruments, and experiment cutting-edge technologies. Notwithstanding, by learning from their experiences, the Federal Government started to gain ground in the environmental field. The main factors deemed responsible for the country change of direction were the evident damages that air pollution started to cause to human health (via smog) as well as to the environment (acid rain)[221]. Already in the late 1980s, the country differentiated itself from the other international community's governments by playing an agenda-setter role in the environmental field. When in the 1990s climate change negotiations began to intensify, German chancellors and ministers of environment did not miss the chance to show their firm commitment with regard to climate change issues. Indeed, since the 1992 Earth Summit took place in Rio de Janeiro, German contribution became particularly valuable in international climate negotiations. Notably, the first Conference of the Parties took place right in 1995 in Berlin. On that occasion, it was the Federal Government that (following AOSIS) invited Annex I parties to develop a protocol that could include effective proposals for GHGs emission reductions beyond the 2000 period. Additionally, in 1995 the UNFCCC Secretariat was established in Bonn[222].

On the whole, apart from reducing its GHGs emissions, the country made remarkable progresses at the institutional level, and improved its informational-cognitive, technological, and scientific capacities. This is the reason why, according to Weidner and Mez[223], it has been observed a gradual diffusion of German policy instruments and technologies[224] at the international level.

[220] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 38.
[221] Weidner, H. and Mez, L., (2008), "German Climate Change Policy: a success story with some flaws", *The Journal of Environment & Development*, Vol. 17, No. 4, p. 358.
[222] https://unfccc.int/about-us/about-the-secretariat
[223] Weidner, H. and Mez, L., (2008), "German Climate Change Policy: a success story with some flaws", *The Journal of Environment & Development*, Vol. 17, No. 4, p. 356.
[224] As for instance wind and solar power.

Indeed, as noted by Schreurs and Tiberghien[225], despite German political parties have taken different stances on how climate change needed to be tackled, all administrations agreed on the impellent need to establish and fulfil emission reductions at the national level.

In June 1990, the government agreed on a 25% CO_2 reduction target to be achieved within 2005 compared to emission levels of 1987. At the same time, an "Inter-ministerial Working Group on CO_2 reduction" (IMA) was set up under the lead of the Federal Ministry for the Environment. The working group was in charge of developing a CO_2 reduction program that could delineate proper measures and policies so as to achieve the German political goal. The program was adopted in November 1990, right after the German reunification. In this context, the government put much emphasis on the importance of combining economic mechanisms with other "soft" instruments such as information and training[226]. Notably, scholars pointed out that Kohl's administration, which lasted until 1998, proved to be a period of utmost importance for the country, as it exerted great influence in emission reductions achievements[227]. In this respect, it is also worth noting that from 1994 to 1998 the Environment Minister position was occupied by the current chancellor Angela Merkel. Despite her visible willingness to improve German-US relationship, her diplomatic activities also proved to be of great help during COP-1 and in the Kyoto negotiations. For instance, in occasion of her visit to Japan in 1997, she demonstrated her strong commitment to Kyoto by persuading Japanese leaders to agree to bold measures[228]. Despite politicians demonstrated great ability in climate change policy formulation, experts claimed that the 1990s country's achievements in terms of GHGs emission reductions may in part be attributed to the then German domestic economic situation. Put it differently, the German unification increased the possibilities of success for both Germany, and consequently, the EU mainly because several heavily polluting industries ceased operating. As a result, the government's chances of achieving its emission reduction target increased dramatically. German efforts in dealing with climate change problems especially in the 1990 decade appeared rather evident. However, when investigating the contributions given by the country in this context, the German unification has received much attention by legal scholars[229].

As far as the UK stance is concerned, it can be argued that at the least until the first half of the 1990s, the country adopted a rather skeptical position in regard to the ambitious proposals and

[225] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 36.
[226] Müller, E. (1998), "Differences in climate change policy in Germany and the United States from a political science perspective", *Energy & Environment*, Vol. 9, No. 4, p. 464.
[227] In occasion of the first UNFCCC COP in Berlin (1995), Chancellor Kohl declared that Germany would achieve a 25% emission reduction target by 2005 compared to 1990 emission levels.
[228] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 37.
[229] *Ibidem.*

reduction targets presented at the European level. UK skepticism became especially evident when, on the eve of the Rio Summit the Commission elaborated, under Council request, a Climate Change Package. A harmonized energy/carbon tax was included among the wide range of policy instruments proposed, which the UK firmly refused. In June 1990, the country attempted to elaborate a proposal for the stabilization of CO_2 emissions at 1990 levels by 2005, but compared to the other EU members' proposals, it appeared rather modest. When in March 1993 the country's budget was presented, the British government took the opportunity to confirm its fundamental opposition to the Commission five-part package, and declared that the UK would not accept any kind of taxes imposed by the Union. Instead, the country preferred to elaborate a package on its own, which included VAT on domestic energy and vehicle-fuel excise duties[230]. It is worth stressing that, alongside Germany[231], the UK was responsible for a large part of European CO_2 emissions. Yet, data reported that in 1990 the UK accounted for a 21.1% CO_2 emissions[232]. Against this backdrop, it appeared rather evident that being a EU member, the British government had to take its responsibility, and push for stringent measures to curb CO_2 emissions. In this respect, there is no doubt that the British transition from coal to natural gas proved to be of utmost importance. Yet, such a shift helped to reduce the carbon footprint of the power sector, increasing the British chances to meet its climate commitments. Indeed, the burning of gas in power generation does not affect the environment as much as oil and coal can do. Yet, even though GHG effects are also provoked by unburned gas like methane, its leakage remains in the atmosphere for a much lesser time than CO_2. In this sense, legal experts argued that the process of public companies' privatization, initiated in the 1980s and lasted until the early 1990s, heavily contributed to the consolidation of this change. As claimed by the Director of Engineering at Rolls-Royce Industrial Power Group "without privatization there would have been a slower switch to gas, in practice what we have seen is a revolution"[233]. Notably, it has to be highlighted that gas also became an efficient and flexible partner for renewable energy within the country.

On the whole, the 1990 decade saw a gradual change of direction as regards the British approach to the climate change problem. During this span of time, its national goal for CO_2 reduction kept being adjusted. In 1997, the country announced an 8% reduction below 1990 levels to be achieved within 2000. After the adoption of the Kyoto Protocol, and the subsequent negotiation of

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[230] Grubb, M., (1995), 'European Climate Change Policy in a Global Context', in Helge O le Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development*, Oxford: Oxford University Press, p. 45.

[231] In 1990, German CO_2 emissions accounted for 25.5%.

[232] Grubb, M., (1995), 'European Climate Change Policy in a Global Context', in Helge O le Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development*, Oxford: Oxford University Press, p. 45.

[233] Winskel (2002), as cited in Bocse, A. and Gegenbauer, C., (2017), *UK's Dash for Gas: Implications for the role of natural gas in European power generation*, European Centre for Energy and Resource Security (EUCERS), Department of War Studies. London: King's College London, p. 9.

the EU burden-sharing agreement, the British target was increased to 12,5%. As noted by legal scholars, the UK became a strong supporter of climate action particularly since Prime Minister Blair took power[234]. In May 1997, he committed to curb CO_2 emissions of a 20% below 1990 levels by 2010, a pledge that in February 2000 was also included in the country's climate change program[235].

In contrast to the approaches undertaken by Germany and the UK, the French experience is somewhat different but it is still worth of notice, especially as far as its energy policy framework is concerned. In the first place, it has to be highlighted that already in the 1980s and beginning of the 1990s, France experienced significant energy-related emission reductions, mainly due to the oil price shocks[236]. In this respect, Szarka[237] argued that the country was also undergoing a period of deep political and economic transition, setting national independence as its main objective. In order to do this, a host of energy policy measures were implemented by the French government, which inevitably led to a reduction in GHGs emissions as well. Apart from placing taxes on fuels, and introducing regulations on energy efficiency, the French government undertook a massive nuclear construction program. Notably, in the 1990s, two main sources were responsible for providing to France almost the 90% of the country's electricity: nuclear (75%-78%) and hydro (12%-15%)[238]. Indeed, both of them are largely carbon free sources at the point of generation. The French decision to become less dependent on fossil fuels explains in some way the reasons why the country played a limited role in the international climate negotiations, being rather more focused on its national interests. In other words, the elements that made French policy framework unique on the international level were also the factors that influenced the country's attitude towards climate change negotiations. Moreover, Scheurs and Tiberghien stressed the fact that France has never been a country with a deep-rooted environmental community. Similarly, public opinion did not exert so much pressure on the French government at least until 2007, when climate erratic climate occurrences started to take place more frequently[239].

Alongside the UK, France was one of the main opponents to the combined carbon/energy tax proposed by the EU Commission in the 1990. Instead, given the size of its nuclear contribution, the

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[234] In May 1997, Tony Blair was elected Prime Minister. According to legal scholars, climate change was one of his main concerns during the political campaign.

[235] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No 4, p. 38.

[236] Meritet, S. (2010), *French Energy Policy within European Union Framework: From Black Sheep to Model?* Available at: https://www.researchgate.net/publication/48445452_French_energy_policy_within_the_European_Union_framework_From_black_sheep_to_model. Last visit on 23/02/2019.

[237] Szarka, J. (2011), "Climate Policy in France: Between national interest and global solidarity?", *L'Harmattan, Politique Européenne*, Vol. 1, No. 33, pp 160-161.

[238] *Ibidem.*

[239] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 39.

country proposed a tax entirely based on the carbon content of fossil fuels[240]. Indeed, France was extremely concerned about its economic competitiveness, which according to the French government, was seriously at risk of being affected by European stringent measures.

In the Kyoto Protocol framework, France did not undertake any ambitious commitment. Rather, it simply agreed to stabilize its GHGs emissions at their 1990 level by 2008-2012. Instead, the country involvement in the climate change regime increased after the Kyoto Protocol adoption. Notably, one of the most valuable figures in the French political scenario as far as the climate change problem is concerned, was President Chirac[241]. Supported by his adviser Nicolas Hulot, Chirac aimed at creating a new political image by exploiting climate change as a major entrepreneurial issue. In 2005, he managed to convince the less enthusiastic conservative parliamentary majority to vote for the acknowledgment of basic environmental rights, which needed to become part of the French legal system. In 2007, Chirac recognized environmental issues as one of his main priorities, calling for the establishment of a UN Environmental Organization[242].

As illustrated, when considering the EU as a "collection of states", striking differences among EU members can be observed. Indeed, countries' contribution to 1990s climate change negotiations varied according to their policy framework as well as to their national interests. Some of them gave a fundamental contribution to the point of being considered by legal scholars as policy entrepreneurs alongside EU institutions[243].

[240] Grubb, M., (1995), 'European Climate Change Policy in a Global Context', in Helge O le Bergesen, Georg Parmann, and Øystein B. Thommessen (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development.* Oxford: Oxford University Press, p. 42.
[241] Jacques Chirac administration started in May 1995 and concluded in May 2007.
[242] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 39.
[243] *Ivi*, pp 36.

Chapter 3. The political leadership of the EU in the framework of the Berlin process.

This chapter examines the leadership role played by the European Union in the Berlin process, namely the rounds of negotiations that led to the Third Conference of the Parties, and to the adoption of the 1997 Kyoto Protocol. Leadership has been unanimously conceived by academics as fundamental in the climate change regime, for it increases the possibility to adopt international agreements, avoiding deadlocks.

In light of these considerations, the chapter opens with a comprehensive analysis on the concept of political leadership and its key aspects (Section 3.1). It then focuses on the importance of leadership in the climate change regime, highlighting the role played by the EU as a potential leader in this framework (Section 3.2). In order to evaluate the European performance, the analysis revolves around three main types of leadership typically exerted at the international level: the structural, the entrepreneurial, and the directional leadership (Section 3.3). Accordingly, academics argued that the type of political leadership exerted by governments varies according to the specific stage of the negotiation. Therefore, the final part of the chapter illustrates the negotiation process leading to Kyoto so as to understand whether the EU succeeded in playing a role of leader, and if so, which type of leadership it exerted (Sections 3.4-3.5). Notably, the study focuses on the Burden-sharing Agreement reached by the Union under Dutch Presidency in 1997, for it is considered one of the greatest instances of European leadership in the Kyoto framework.

3.1 Conceptualizing the notion of political leadership.

One of the first political leadership theorists was the German sociologist, philosopher, and political economist, Max Weber. Notably, *Economy and Society*[244] (1922), contains a wide range of themes

[244] The book was published posthumously in the 1920s by Weber's wife. Nowadays it is considered as one of the greatest sociological treatises of the 20th century.

tackled by Weber during his life such as religion, law, bureaucracy, social action, the political community and its dimensions. While exploring the topic of political obligation, he asked himself why individuals should obey the state. In this sense, Weber argued that individuals do not follow the law because of self-interest (material economic), fear (to be punished), or because they are accustomed to do so. Rather, they perceive the state (the authority) as good or right[245]. Against this backdrop, Weber theorized three different types of individuals' authorities or leaderships: the traditional, the legal-rational, and the charismatic. While traditional authority is legitimated by traditional norms (monarch, feudal, hereditary chieftain), legal-rational authority lays its basis on legal norms, finding its best expression within bureaucratic organizations[246].

For the scope of this study, charismatic leadership is particularly relevant, due to the fact that it emerges from leader's personal qualities. In this sense, charismatic authority is an extremely pure form of authority for it breaks through all existing normative structures[247]. Notably, according to Weber:

> *Charisma "knows no formal and regulated appointment or dismissal, no career, advancement, or salary, no supervisory or appeals body, no local or purely technical jurisdiction, and no permanent institutions in the manner of bureaucratic agencies"*[248].

Weber's citation points out one of the most striking features of the concept of charisma, namely its relational nature. Yet, unlike traditional or legal rational authority, in case individuals withdraw their recognition, the charismatic leader will cease to exist[249]. Indeed, the charisma definition provided by Weber proved to be extremely innovative for the time, as it went against tradition, changing point of reference.

During the centuries, the concept of leadership developed extensively, and benefited from a wide range of academic contributions which, according to the perspective adopted (power, leader's values, leader and followers dichotomy), provided different definitions of political leadership.

One of the most cited definitions of leadership comes from Underdal, who defined leadership as "an asymmetrical relationship of influence, where one actor guides or directs the behaviour of others towards a certain goal over a certain period of time"[250]. In this sense, leadership appears

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[245] Epley, J.F. (2015), "Weber's Theory of Charismatic Leadership: The case of Muslim Leaders in Contemporary Indonesian Politics", *International Journal of Humanities and Social Science*, Vol. 5, No.7, p. 7.
[246] Spencer, M.E., (1970), "Weber on Legitimate Norms and Authority", *The British Journal of Sociology*, Vol. 21, No. 2, p. 132.
[247] *Ibidem.*
[248] Weber (1978), as cited by Epley, J.F. (2015), "Weber's Theory of Charismatic Leadership: The case of Muslim Leaders in Contemporary Indonesian Politics", *International Journal of Humanities and Social Science*, Vol. 5, No. 7, p. 7.
[249] *Ibidem.*
[250] Underdal (1994), as cited by Ugur, O., Dogan, K.D., Aksoy, M., (2016) "European Union as a Leader in Climate Change Policy: Assessing Europe's Roles in the World", *European Scientific Journal*, Vol. 12, No. 5, p. 289.

fundamental as it confirms the willingness of the leader to undertake meaningful actions, creating at the same time incentives that may persuade the other parties to follow a specific line of action. Following this line of reasoning, Underdal also suggested considering leadership as a "relationship between leaders and followers"[251].

The definition provided by the Blackwell Encyclopaedia of Political Science seems quite similar to Underdal's perspective, as it describes leadership as "the power of one or few individuals to induce a group to adopt a particular line of policy"[252]. Instead, the Dictionary of Political Analysis conceives leadership as something that "enables an individual to shape the collective behavioural pattern of a group in a direction determined by his or her own values"[253]. As noted by Andresen and Agrawala[254], both definitions confine leadership to individuals, and put emphasis on the relation established between leaders and followers. The only aspect that differs one from the other is that while the former sheds light on the importance of power so as to exert leadership, the latter gives much emphasis on the leader's values.

In this sense, Cramme[255] noted that there is wide acceptance among academics on the fact that the simple exercise of power or whatever other form of authority cannot be considered in itself "leadership". Indeed, something else is needed. For instance, Blondel[256] attributed great importance to the personal skills of the office holder as, in his opinion, they are key variables (alongside the environmental setting) in order to pursue leadership and exert it successfully. Differently, Elgie focused on the motivation and the degree of power possessed by political leaders. According to him, political leadership is:

> *the process by which governments try to exercise control [...]. The extent to which heads of state and heads of governments, that is, the individuals who occupy the most prominent positions of authority in the state structure, are able to determine the outcome of the decision-making process*[257].

Notably, when considering Blondel's and Elgie's perspectives, one of the most relevant aspects worth being highlighted is that they take into account the institutional setting leaders are surrounded by, as

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[251] Underdal (1994), as cited by Karlsson, C., Parker, C., Hjerpe, M., Linnér, B.O, (2011), "Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants", *Global Environmental Politics*, Vol. 11, No. 1, p. 89.
[252] As cited in Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, pp 40-41.
[253] *Ibidem.*
[254] *Ibidem*.
[255] Cramme, O. (2011), "In Search of Leadership", in Tsoukalis, L. and Emmanouilidis, J.A., *The Delphic Oracle on Europe: Is there a Future for the European Union.* New York: Oxford University Press, p. 33.
[256] Blondel (2008), as cited by Tömmel, I. and Verdun, A. (2017), "Political leadership in the European Union: an introduction", *Journal of European Integration*, Vol. 39, No. 2, p. 104.
[257] Elgie (1995), as cited in *Ibidem*.

well as the institutional position they are in charge to cover. In other words, as stated in Elgie's citation, political leadership is exerted by individuals who act on behalf of the state. Notwithstanding, as claimed by Cramme[258], it is worth noting that that both individuals and institutional actors can interact in the process leading to a mutual beneficial result. Organizations, governments, and individuals have all the potential to influence the evolution and the final result of a given bargaining process.

Against this backdrop, it has to be stressed that political leadership can indeed be exerted in both national and international context[259]. When negotiating at the international level, legal scholars[260] claimed that some factors (such as resource *capability*, *credibility*, and *legitimacy*) are of utmost importance in order to exert effective leadership[261]. Put it differently, governments (and the individuals working on behalf of them) have to possess specific capabilities, skills or resources, and use them to their own advantage. Accordingly, Grubb and Gupta claimed that historically, political leaders "have been those who combined personal credibility, vision and bravery with strategic divide and rule behaviour"[262].

Following this line of reasoning, it is worth stressing that while resource *capability* only confines to the leader's profile, both *legitimacy* and *credibility* imply also the involvement of its counterparts. This appears perfectly in line with Underdal's perspective who, as mentioned previously, conceived leadership as relationship between leaders and followers[263]. Most importantly, the *legitimacy* and *credibility* factors also indicate that when analysing the concept of leadership at the international level, the supply side is not the only relevant perspective. Indeed, the demand side of leadership needs to be taken into consideration as well.

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[258] Cramme, O. (2011), "In Search of Leadership", in Tsoukalis, L. and Emmanouilidis, J.A., *The Delphic Oracle on Europe: Is there a Future for the European Union.* New York*:* Oxford University Press, p 33.
[259] *Ibidem.*
[260] As for instance Young (1991), Underdal (1994).
[261] Karlsson, C., Parker, C., Hjerpe, M., Linnér, B.O, (2011), "Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants", *Global Environmental Politics*, Vol. 11, No. 1, p. 89.
[262] As cited in Grubb, M. and Gupta, J. (2000), "Leadership: Theory and methodology" in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 18.
[263] Underdal (1994), as cited by Karlsson, C., Parker, C., Hjerpe, M., Linnér, B.O, (2011), "Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants", *Global Environmental Politics*, Vol. 11, No. 1, p. 89.

3.2 The importance of political leadership in the climate change regime.

Given the high governmental interests at stake, dealing with climate change entails great effort by the international community, as massive changes in national legislations and international structures are required. This inevitably leads to profound domestic and international political challenges. For this reason, in order to cope with changes of such a magnitude, academics agreed on considering the presence of leadership in the climate change regime as fundamental[264].

Accordingly, Karlsson et al. agreed on considering leadership "an essential ingredient in reaching international agreements and overcoming the collective action problems associated with responding to climate change"[265]. Indeed, when clear leadership is exerted in multilateral negotiations, problems are tackled more effectively. Yet, not only does leadership serve to ease the negotiation process, but it also, and most importantly, allows avoiding deadlocks[266].

Since climate negotiations started to take place at the international level, the concept of leadership has been frequently used in policy and media discourse. Nowadays, leadership is typically associated to the nation-states' willingness to reduce GHGs emissions. Usually, "the more ambitious the emissions reduction goal, the higher the leadership score"[267]. Notwithstanding, exploring the concept of leadership in relation to the climate change issue is much more complicated than this, as a host of factors deserve to be taken into account.

Oberthür and Ott[268] argued that leadership played a crucial role especially in the early phases of the development of environmental regimes, when the array of rules and procedures still need to be consolidated. In this sense, Oberthür and Ott recognized that the 1992 UNFCCC did establish a basic institutional framework. However, it "was not mature enough to provide clear guidance to the development of climate policy, not least because of the failure to set clear targets for climate protection or the development of climate policy"[269]. In other words, institutionally talking, the Convention did not provide a proper framework for the adoption of concrete rules. This is the reason why, according to Oberthür and Ott, the following 1990s international meetings as well as the whole

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[264] Grubb, M. and Gupta, J. (2000), "Climate Change, leadership and the EU" in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 3. See also Gupta and Van der Grjp (2000).

[265] Karlsson, C., Hjerpe, M., Parker, C., and Linner, B.O. (2012), "The legitimacy of leadership in international climate change negotiations, *Ambio*, Vol. 41, Suppl 1, p. 46.

[266] Sannerstedt (2005), as cited in Ugur, O., Dogan, K.D., Aksoy, M., (2016) "European Union as a Leader in Climate Change Policy: Assessing Europe's Roles in the World", *European Scientific Journal*, Vol. 12, No. 5, p. 289.

[267] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 41.

[268] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 267.

[269] As cited in *ibidem*.

Kyoto process have to be conceived as early stages of the international climate change regime, in which decisive leadership was needed.

The importance of leadership in this context was not only recognized by academics, but also by the whole of the international community. Notably, the 1992 Framework Convention clearly established that richer OECD countries, especially the US and the most powerful European countries, should pioneer emission reduction commitments while supporting poorer countries in their fight against climate change through the common but differentiated responsibilities mechanism[270].

In this sense, Karlsson et al.[271] as well as Oberthür and Ott[272], claimed that since climate negotiations were initiated at the international level, leadership on climate change has been mainly exerted by the US and the EU. While the former played an exclusive leading role in the early days of atmosphere protection, since the beginning of the 1990s, a period of co-leadership between the US and the EU started. Yet, Bäckstrand and Elgström conceived the Framework Convention as a compromise between these two international actors[273]. Since the adoption of the 1992 Convention, the Union placed itself in the potential position of exerting decisive leadership in international climate negotiations, to the point that Jaeger et al. described "procedural leadership" in climate change policy as "a European task"[274].

In this sense, it is worth specifying that international political leadership can be exerted in different moments of the negotiation process, namely in the agenda setting phase, norm setting phase, or at the moment of actual implementation[275]. Accordingly, the contribution of Yamin[276] is fundamental. Yet, the author analysed the European leadership performance by dividing EU climate policy into five phases, covering a span of time going from the moment in which scientific concern emerged in the late 1980s, to the entry into force of the Kyoto Protocol.

Yamin observed that the EU showed its engagement in the climate issue since the first IPCC's

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[270] Karlsson, C., Parker, C., Hjerpe, M., Linnér, B.O, (2011), "Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants", *Global Environmental Politics*, Vol. 11, No. 1, p. 93.

[271] Karlsson, C., Hjerpe, M., Parker, C., and Linner, B.O. (2012), "The legitimacy of leadership in international climate change negotiations, *Ambio*, Vol. 41, Suppl 1, p. 47.

[272] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 267.

[273] Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 1375.

[274] Jaeger et al (1997), as cited in Grubb, M. and Gupta, J. (2000), "Climate Change, leadership and the EU" in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 3.

[275] Gupta, J. and Van der Grijp, N. (2002), "Perceptions of the EU's role", in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 3. See also Gupta and Van der Grjp (2000), p. 68. See also Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 49.

[276] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, pp 48-49.

reports were published. In this sense, Andresen and Agrawala[277] claimed that climate change leadership was conceived by the overall Union in broader strategic terms. Yet, in their opinion, not only was the European engagement attributed to its concern about the environmental problem, but also to its ambition to stand out as a strong and unified block on the world scene. Such engagement was further confirmed by the stabilisation goal adopted by the European Council right few months before the establishment of the Intergovernmental Negotiating Committee (INC), which was set up by the UN General Assembly in 1990 to negotiate a convention that could tackle climate change.

Among other things, Yamin pointed out that during the first phase, the European stance went in contrast with the hostile position held by many non-EU OECD countries, among which there was also the US. In the following years, the EU continued to hold a proactive stance as regards its commitments in the climate change issue.

Oberthür and Kelly[278] provided a similar line of reasoning in this context, recognizing that since climate negotiations started in 1991, the EU demonstrated its leadership attitude by pushing for stringent international commitments. In particular, as noted by Schreurs and Tiberghien[279], since the early 1990s, the EU played an agenda-setter role, as it adopted policies and programmes that placed the Union at the forefront of international efforts. While at the national level, several European countries had announced voluntary emission reduction targets, the Union attempted to design a climate package to promote renewable energy[280] and establish a monitoring mechanism for European GHGs[281].

Notwithstanding, academics did not unanimously agreed on considering the EU a proactive actor during this phase. For instance, at the Rio Summit "many observers felt that the Community did not take advantage from the opportunity to take a serious lead in influencing global environmental politics"[282]. Rather, some academics defined the Framework Convention as a great US achievement. Not surprisingly, the US had always been at the forefront in fostering the adoption of a legal instrument characterized by flexible, non-binding procedures.

In the meantime, the "soft approach" pursued by the EU was on its way to be weakened due

[277] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 45.
[278] Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, p. 36.
[279] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, 7-4, p. 20.
[280] Council Decision 93/500/EEC, OJ No. L 235, 13.09.1993.
[281] Council Decision 93/389/EEC, OJ No. L 167, 24.06.1993.
[282] Johnson and Corcelle (1997), as cited by Grubb, M. and Gupta, J. (2000), "Climate Change, leadership and the EU" in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 5.

to strong internal disagreements[283]. Indeed, the divergence of views between the Commission and the Council with regard to the initiatives included in the climate change package deadlocked the development of the European climate policy. According to Yamin[284], such a stalemate affected the European leadership in international negotiations due to the discrepancy emerged between the Community's political goals and their effective implementation.

These are the reasons that led Andresen and Agrawala[285] to argue that at least during the first half of the 1990s, "instrumental political leadership"- conceived as the ability of creating the basis to arrive to a joint solution - was not exerted by the EU. Notwithstanding, given the ambitious goals set by some EU member states (such as Germany, the Netherlands, and Denmark) the authors acknowledged some scattered evidence of directional leadership[286]. Despite academics' observations, Yamin stressed that the Union's credibility (at least in the second half of the 1990s) managed not to be completely undermined, since unlike other OECD countries, the EU resulted in being within sight of its stabilization goal[287]. Indeed, as already illustrated in the previous chapters, the German Unification and the demise of the UK coal industry played a crucial role in this respect.

3.3 Three modes of exerting political leadership in climate negotiations.

As previously stressed, scholars claimed that the climate change issue was conceived by the EU in broader strategic terms[288]. Reportedly, the European concern about environmental problems has also been attributed to its ambition to stand out as a strong and unified block on the world scene.

Starting from the fact that political leadership can be exerted in different moments of the negotiation process[289], academics also stressed that according to the specific stage of the negotiation,

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[283] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 46.

[284] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, pp 49-50.

[285] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 46.

[286] *Ibidem.*

[287] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 50.

[288] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 45.

[289] Gupta, J. and Van der Grijp, N. (2002), "Perceptions of the EU's role", in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 3. See also Gupta and Van der Grjp (2000), p. 68.

different types of leadership can be exerted[290]. Along the decades, legal scholars have provided a wide range of leadership theories in this context. One of the most valuable contributions with regard to the theorization of leadership in multilateral negotiations is that of Oran R. Young (1991)[291]. Young identified three types of political leadership: structural, entrepreneurial, and intellectual.

Structural leadership[292] emerges when an individual or an organization, acting on behalf of the state, employs constructively his/its "power-resources"[293] so as to affect others' incentives to his/its advantage. This type of leadership is exerted through the use of threats and promises or, as some legal scholars claimed, through the use of "stick and carrots"[294]. For instance, this expression was also employed by Underdal to give his explanation of "coercive leadership"[295], a definition that presents a close analogy to Young's. In this context, Andresen and Agrawala provided a very similar concept, and called it "power-based leadership"[296].

Overall, when exerting this kind of leadership, the actor is normally guided by self-interest. However, in order to define this approach a leadership behaviour, there has to be some form of common interest as well. Indeed, especially in the case of structural leadership, it is worth stressing that is not just a matter of economic and material resources. Yet, the way in which power is used to manipulate incentives is crucial in this context. As explained, this type of leadership puts emphasis on the political strength of the actor, and his/its weight with respect to the issue at hand.

By virtue of its membership (15 countries at that time of the Kyoto Process), population, and combined GDP, academics recognized that the EU possesses some sort of structural power[297]. However, scholarship stressed that the Union's internal and external constraints pose evident limits as well[298]. In any case, according to Grubb and Gupta, structural leadership is crucial to understand why during the Kyoto process the political attention focused mainly on the competing visions of the US and the EU[299].

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[290] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 42.
[291] The great majority of academics refer to Young's classification in order to carry out their investigations in this context. See for instance, Grubb and Gupta (2000), Andresen and Agrawala (2002), Kanie (2003) Ugur, Dogan, and Aksoy (2016).
[292] Young (1991) and Underdal (1994), acknowledged hegemony as the extreme case of structural leadership.
[293] As cited in Karlsson, C., Hjerpe, M., Parker, C., and Linner, B.O. (2012), "The legitimacy of leadership in international climate change negotiations", *Ambio*, Vol. 41, Suppl 1, p. 47.
[294] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, Issue 2, p. 282.
[295] Grubb, M. and Gupta, J. (2002), "Leadership: Theory and methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 18.
[296] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 42.
[297] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, Issue 2, p. 282.
[298] Grubb, M. and Gupta, J. (2002), "Leadership: Theory and methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 18.
[299] *Ivi*, p. 19.

As far as entrepreneurial leadership is concerned (also defined by academics as instrumental, problem-solving, or idea-based leadership[300]), the focus is on problem naming and framing as well as on the promotions of solutions to collective problems[301]. In this case, the "entrepreneur"[302] has to be capable of finding the way to achieve common goals and, at the same time, to convince the other parties about his/her merits in a given problem or in solution framing.

Academics noted that entrepreneurial leadership appears particularly relevant in the early phases of a policy-making process when the institutional processes are fluid, and actors are more inclined to consider new ideas. In addition to this, it has to be noted that when exerting this kind of leadership negotiators focus on integrative rather than distributive bargaining. In order to achieve mutually beneficial outcomes, actors can rely on issue-linkage and coalition-building. Overall, the essential features of the entrepreneurial leader are his/her political skills, energy, and formal status. This leadership approach can be exerted by individuals or by institutional representatives.

Academics observed that entrepreneurial leadership in the climate change context has been exerted along a number of fronts. Tömmel and Verdun[303] noted that the great majority of investigations on political leadership within the EU have identified as leaders the Commission, the Council, their respective Presidents, and a number of national leaders[304].

There is no doubt that the actions and commitments of some pioneering states proved to be essential for the consolidation of European leadership in the climate change context. Notably, the burden-sharing agreement achieved in 1997 under the Dutch Presidency provided one of the most significant instances of entrepreneurial EU leadership in the climate change framework[305]. Additionally, Schreurs and Tiberghien recognized that Germany and the UK provided consistent instances of entrepreneurial leadership at the EU level, particularly when holding the Council presidency[306].

Notwithstanding, as noted by Tömmel and Verdun[307], in a system of fragmented and partly

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[300] Legal scholars labelled this type of leadership in different ways. While Young (1991) defined it as "entrepreneurial" and Underdal (1994) as "instrumental", Malnes (1995) preferred the term "problem-solving". As noted by Grubb and Gupta (2000), despite different nomenclatures were given to this concept clear similarities exist.

[301] Karlsson, C., Hjerpe, M., Parker, C., and Linner, B.O. (2012), "The legitimacy of leadership in international climate change negotiations, *Ambio,* Vol. 41, Suppl 1, p. 48.

[302] The entrepreneur's figure and its features have been comprehensively illustrated in chapter 1.

[303] Tömmel, I. and Verdun, A. (2017), "Political leadership in the European Union: an introduction", *Journal of European Integration,* Vol. 39, No. 2, p. 105.

[304] See also Damro, C. and Luances-Méndez, P. (2003) "The Kyoto Protocol's emissions trading system: An EU-US Environmental Flip-Flop", Working paper No. 5, Available at: http://aei.pitt.edu/874/.

[305] Kanie, N. (2003), "Domestic capacity, regional institution and global negotiations: lessons from the Netherlands-EU Kyoto Protocol negotiation", in Faure, M., Gupta, J. and Nentjes, A., *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, pp 230-247.

[306] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics,* Vol. 7, No. 4, p. 25.

[307] Tömmel, I. and Verdun, A. (2017), "Political leadership in the European Union: an introduction", *Journal of European Integration,* Vol. 39, No. 2, p. 103.

shared responsibility, exerting leadership becomes particularly challenging, especially because decisions are taken too late or in some cases not at all.

Schreurs and Tiberghien[308] labelled this kind of dynamic "multi-level governance", and explained that even though in this framework policy proposals are very likely to be blocked, such governance structure can also open numerous avenues for policy change, allowing member states to give voice to their priorities and concerns. Similarly, Cramme[309] defined it as a "process of collective choice", stressing the importance of interactions among institutional actors so as to achieve mutually beneficial results.

As already mentioned, the leadership roles played by the EP, and most importantly by the Commission, proved to be crucial. Yet, a wide range of academics' analysis have attempted to apply the concept of policy entrepreneurship to the role played by the Commission in different issues[310]. For instance, Zito highlighted the active role played by the Commission in the early 1990s as regards the promotion of an innovative policy instrument, namely the combined carbon/energy tax. Despite the tax proposal met substantial opposition within the Commission since the beginning, it managed to reach the Council decision-making stage[311].

Similarly, Skjærseth and Wettestad[312] argued that the entrepreneurial leadership of the Commission proved to be crucial with regard to the adoption of the EU Emission Trading System after the Kyoto Protocol adoption.

Against this backdrop, Maltby[313] claimed that in order to pursue effective policy change, the Commission can act as a supranational policy entrepreneur by resorting to a wide range of strategies. In the first place, it can use its legitimacy and pre-existing norms of policy-making as starting point. Most importantly, the Commission must be capable of selling its solutions to problems during the policy window[314] opened by crisis. Likewise, Maltby identified continuous advocacy as another relevant strategy that helps the Commission pursue effective policy change. Not least, the Commission has also the chance to rely on expertise, knowledge based authority, as well as on

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[308] *Ibidem*.

[309] As cited by Cramme, O. (2011), "In Search of Leadership", in Tsoukalis, L. and Emmanouilidis, J.A., *The Delphic Oracle on Europe: Is there a Future for the European Union?*. New York: Oxford University Press, p. 33.

[310] See Pollack (1997), Moravcsik (1999), Wettestad et.al (2012), as mentioned in Maltby, T. (2013), "European Union energy policy integration: A case of European Commission policy entrepreneurship and increasing supranationalism", Energy Policy, Vol. 55, p. 436.

[311] Zito, A. R. (2000), "The Puzzle of EU Environmental Policy", in *Creating Environmental Policy in the European Union*, Palgrave MacMillan, London, p. 4.

[312] Skærseth, J.B. and Wettestad, J. (2010), "Making the EU Emissions Trading System: The European Commission as an entrepreneurial epistemic leader", *Global Environmental Change*, Vol. 20, No. 2, pp 314-321.

[313] Maltby, T. (2013), "European Union energy policy integration: A case of European Commission policy entrepreneurship and increasing supranationalism", *Energy Policy*, Vol. 55, p. 437.

[314] The concept of "policy window" has been theorized by Kingdon (1995). His valuable contribution with regard to policy entrepreneurship has been comprehensively addressed in the first chapter of this study.

alliances with EU member states.

As claimed by Schreurs and Tiberghien[315], with regard to climate change issues, the Commission has been able to exploit its agenda-setting power to foster and develop member states' blueprints, thus promoting new policy ideas. In this sense, the Commission followed a three-level approach. At one level, it strove for giving a response to public opinion, whose pressure regarding environmental issues was becoming much stronger. In order to satisfy public opinion, some results at the EU level needed to be achieved. At a second level, the Commission used climate change policy as an argument to foster EU integration so as to increase its monitoring power, and acquiring new regulatory tools. At the third level, which is perhaps the most striking Commission's manoeuvre for the scope of this study, the Commission used climate change to shape the EU's foreign identity, especially in response to the cumbersome US position.

The contribution of Zito is extremely useful to understand the importance of entrepreneurial leadership in the EU sphere of action. In particular, the author investigated the reasons that led the EU to introduce substantial policy change in the environmental field. He observed that despite intergovernmental bargaining perspectives would normally predict least common denominator outcomes, "collective entrepreneurship" increases the changes for the implementation of more demanding policies. In this sense, the entrepreneur (being a member state, the Parliament, or the Commission) can redefine actors' interests, and pursue the revision of policy goals, thus moving beyond the least common denominator. In order to do it, not only are the ideas and the interests behind them important, but also the entrepreneur's persuasiveness[316]. On the whole, Zito argued that by using an entrepreneurial decision-making approach, the cooperation among a wide range of actors within the EU led the Union beyond anything it had established before[317].

Against this backdrop, Schreurs and Tiberghien argued that the EU has functioned as a "classic norm entrepreneur"[318]. Since the emergence of the first scientific discoveries about the dangerousness of human activities on the environment, the Union has taken its responsibility as industrialized country for reducing its GHGs emissions, constantly working in support of the precautionary principle[319] through its policy-making. Yet, climate change action was defined by the EU as a moral and ethical concern that had to become a priority before any economic interest.

At the same time, Schreurs and Tiberghien also acknowledged the EU as a "political

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[315] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, 7-4, p. 33.
[316] *Ivi*, p. 23.
[317] Zito, A. R. (2000), "The Puzzle of EU Environmental Policy", in *Creating Environmental Policy in the European Union*. London: Palgrave MacMillan, p. 11.
[318] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 23.
[319] As enshrined in Article 3 of the UNFCCC Convention.

entrepreneur"[320] since - as illustrated during the course of this study - it set stringent targets, innovative policies, and far-reaching goals. In this respect, academics observed that especially since the mid-1990s the Union showed a potential for taking the lead, thus becoming the example as well as the possible governments' point of reference in the international scenario.

With regard to the third leadership category theorized by Young and others, academics denominated it differently, such as intellectual, directional or unilateral, according to the emphasis given to certain factors with respect to others. In broad terms, intellectual leadership refers to the actors' ability to produce some relevant form of social, political, intellectual capital that has the potential to make the other parties change their behaviour, and to convince them to follow a particular line of action for the sake of the community. Notably, the essential feature of intellectual leadership does not rest on the number of followers or the weight of the arguments. Rather, what really counts is the voluntary change of position of the counterparts[321].

Similarly, Gupta and Ringius argued that in order to exert directional leadership the actor is required to shape the way in which the other parties think about the issue at stake as well as its possible solutions. However, in addition to this, Gupta and Ringius stressed also the importance of proving that the goal has been successfully achieved at the domestic level by the potential leader[322].

Gupta and Ringius's line of reasoning is quite similar to Andresen and Agrawala's. In this respect, they argued that in order to identify directional leadership, a difference between pushers and leaders has to be taken into account. Yet, while the former simply try to raise awareness among the other parties, calling for innovation or substantial policy change, the latter give concrete example, showing the way on how to deal with an issue. "Cheap and symbolic action does not qualify as leadership in this sense; some sacrifice has to be made to make it credible"[323].

It is worth noting that unlike other types of leadership - structural, entrepreneurial, and even intellectual[324]- which tend to be associated with individuals, directional leadership can only be exerted by nation-states. Yet, if we consider climate change and its large-scale implications, there is no doubt that an institutional asset is essential in order to deal with climate change problems effectively. Indeed, directional leadership is strictly connected to agents of powerful states. As regards structural and entrepreneurial leadership, it has to be pointed out that even though individuals are identified as

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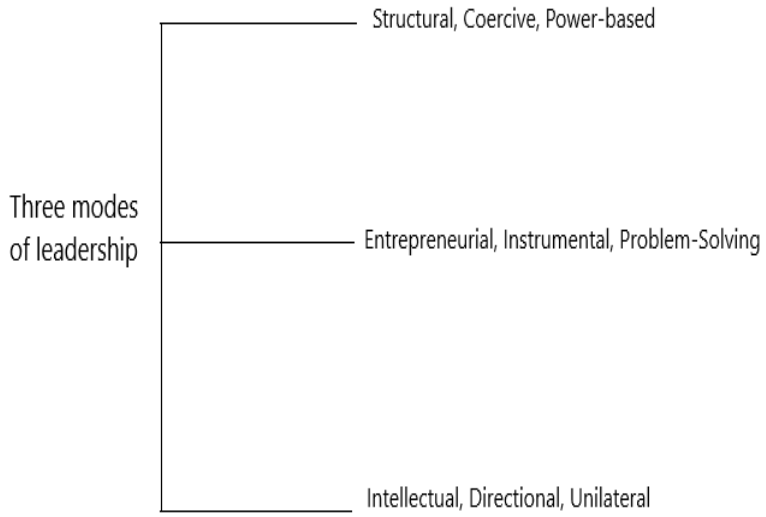
[320] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 23.
[321] Cramme, O. (2011), "In Search of Leadership", in Tsoukalis, L. and Emmanouilidis, J.A., *The Delphic Oracle on Europe: Is there a Future for the European Union?*. New York: Oxford University Press, pp 34-35.
[322] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, Issue 2, p. 282.
[323] Underdal (1991), as cited by Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 42.
[324] Intended as a variant of directional leadership.

the main key players, they cannot be evaluated in isolation from their home government. Yet, in multilateral negotiations, they will always need a formal role or position[325].

Against this backdrop, it is possible to conclude that political leadership can be pursued in numerous ways. However, the most striking aspect of the discourse is that none of the typologies illustrated so far can provide a ready-made structure for analysing leadership behaviours in the climate change context[326]. Indeed, given the global and long-term nature of the climate change problem, pure hegemony is not relevant. Accordingly, the structural or coercive mode of leadership theorized by Underdal and Young are unlikely to come up with sustainable solutions. Yet, even though academics recognized the structural power of both the EU and US, global solutions via "sticks and carrots" cannot be imposed, and if so, they would not last for long. As noted by Carlarne, nowadays global politics' dynamics are quite different from the past. "Superpowers are no longer so super and power is no longer so centralized"[327]. Rather, scholars agreed on considering the entrepreneurial and intellectual approaches more suitable. Still, it has to be pointed out that the exercise of the former does not automatically exclude the latter or the other way around. Indeed, the context, and the issue at stake in a given moment are elements of outmost importance that need to be taken into consideration at the moment of carrying out a comprehensive analysis on leadership performances.



[325] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 42.
[326] Grubb, M. and Gupta, J. (2002), "Leadership: Theory and methodology", in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 19.
[327] As cited by Carlarne, C.P., (2010) "Climate Change Law and Policy: EU and US Approaches". New York: Oxford University Press, p. 11.

Figure 3.1: Three modes of leadership in international multilateral negotiation. With the contributions of Young (1991), Underdal (1994), Malnes (1995), and others. Within each category, leadership approaches differ subtly, depending on the specific perspective adopted.

3.4 The 1995 Berlin Mandate and the establishment of the negotiation process.

The Rio conference led to the adoption of the 1992 Framework Convention, also defined by academics as "the playing field […] for the game of international climate policy"[328]. Article 7 of the Convention established the supreme decision-making body of the climate regime, namely the Conference of the Parties (COP). Among other things, the COP was in charge of reviewing the implementation of the Convention as well as the commitments' adequacy. Most importantly, the COP was responsible for the achievement of the chief Convention's objective, enshrined in Article 2.

The first Conference (COP-1) marked the beginning of the so-called Kyoto process, which was divided by academics in two main phases. The adoption of the Geneva Declaration at COP-2 is considered the watershed moment between these two negotiation phases.

It is worth noting that in the beginning, the process was aiming at defining and narrowing down the wide range of options put on the negotiating table by the governments. Notwithstanding, the most contentious points did not manage to be solved before arriving at Kyoto.

One of the most significant characteristics of the period that followed the Rio Summit regards with no doubt the change of stance of some states in the international scenario. This change resulted in the creation of new alliances which, considering the previous period of environmental enthusiasm, appeared rather surprising. In the run up to Kyoto the former CANZ negotiating cartel - composed by Canada, Australia, and New Zealand - became JUSCANZ so as to include the US and Japan. Notably, until that moment, Canada, Australia and New Zealand had been perceived as progressive countries. Yet, their approach had been distant from the one adopted by the US or the Japan. For instance, during the negotiations of the Framework Convention, they gave support to the EU. Indeed, a significant change of position was taking place. States that had opposed each other until that moment eventually formed a coalition. Subsequently, the coalition was also joined by Switzerland and Norway.

Owing to the constant requests for obtaining differentiated commitments, JUSSCANNZ

[328] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 43.

ended to be labelled by academics as "laggards". Yet, JUSSCANNZ members claimed that due to a variety of circumstantial factors[329] abatement costs would have been extremely elevated for them. As a consequence, they even requested to increase their GHGs emissions[330].

Another significant change of position in the post-Rio period took place at the European level, namely within the UK. Historically, the UK had been rather skeptical as regards the European engagement in the climate change problem, especially during the negotiations for the Climate Convention. Among other things, the UK was one of the main opponents to the carbon tax. According to Andresen and Agrawala[331], the main reason for this change of position cannot be attributed to an increased UK sensitivity towards the climate change problem. Rather, legal scholars attributed this shift of position to economic reasons, namely a restructuring of energy supplies, which among other things led also to consistent GHGs reductions. Apparently, the new UK approach resulted fundamental for the achievement of subsequent agreement on a common EU position. Most likely, it contributed to facilitate agreement in Kyoto as well.

Indeed, the process leading to the Kyoto summit was particularly demanding for the EU. Yet, not only member states had to establish a line of action at the European level, but they also had to define and coordinate their national positions. At the Rio Summit, Germany offered to host COP-1, a proposal that further confirmed the European involvement in the climate change issue since international negotiations were launched. Remarkably, the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC) held six international negotiating sessions to prepare COP-1, which was scheduled to take place in Berlin, in 1995.

As claimed by Bodansky et al., "the ink had barely dried on the FCCC before most countries began to argue that the convention's commitments were inadequate and needed to be supplemented by more specific emission limitation targets"[332]. The first proposal for a protocol to the Convention was submitted by the Alliance of Small Island States (AOSIS) right six months before COP-1 took place. AOSIS suggested a 20% CO_2 emission reductions by 2005. Similarly, Germany submitted another proposal; however none of the two initiatives were effectively taken into consideration by the negotiating body. Rather, the INC preferred to start by laying the basis for the institutional structure of the agreement.

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[329] Circumstantial factors affected JUSSCANNZ members in different ways. On the one hand, considered the efficient energy structure of countries like Japan and Norway, achieving emission reductions beyond their starting level would be effectively rather costly. On the other hand, the difficulties of countries like the US, Canada or Australia regarded their strong dependence on coal.

[330] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 47.

[331] *Ibidem*.

[332] As cited by Bodansky, D., Brunnée, J. and Rajamani, L. (2017), *International Climate Change Law*. Oxford, UK: Oxford University Press, p. 105.

In this respect, it is worth highlighting that prior to Berlin, industrialized countries - mainly OPEC and JUSSCANNZ - gave primary importance to the rules of procedure, issues that until that moment have always been considered a formality at international environmental conferences. As a result, substantial progressive was delayed.

Another reason that caused the negotiations protraction was the US change of government[333], which required some time for delineating the strategy to implement in occasion of the forthcoming international talks. At the same time, EU found itself to deal with member states' skepticism with regard to the CO_2 energy tax. The tax, conceived as the cornerstone of EU climate policy, was definitively abandoned in 1994. As a result, the years preceding the Berlin Conference lacked of leadership[334]. Contrary to expectations, the EU helped to forge consensus at COP-1 by using its structural and instrumental leadership, thus playing a key role at the Berlin conference. Likewise, scholars considered COP-1 as the culmination of German climate policy, as the German contribution in this framework was also crucial.

Since COP-1, climate negotiations were guided by the so-called Ad Hoc Group on the Berlin Mandate (AGBM), which from its endorsement in 1995, represented the "mushrooming climate change related interests inside national bureaucracies"[335]. The Berlin Mandate inaugurated a round of international talks conceived as the institutional point of reference for the adoption, by the third COP, of "a protocol or another legal instrument"[336]. In this respect, the Ad Hoc Group was responsible for elaborating rules of procedure, specific policies and measures in view of the forthcoming international meetings. Most importantly, the main COP-1 objective, which eventually could not be achieved in that occasion, was that of establishing quantified emission limitation and reduction objectives (the so-called QELRO) within a specific span of time[337]. Indeed, in order to set countries' targets, a wide range of factors needed to be taken into account, such as the differences in economic circumstances and available technologies. Targets' revision only regarded Annex I parties. To be fair, Australia had pressed for including developing countries too, but Germany (alongside other European countries) strongly opposed to this proposal, demonstrating their support to developing countries.

The European stance in favour of developing countries during COP-1 proved to be crucial as it forged the so-called "Green Group". The coalition comprehended the EU and the G-77 group, which was led by India, minus the OPEC countries. Notably, the group's position was in part drafted

[333] In 1993, President Clinton took the power becoming the new US President.
[334] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 44.
[335] As cited in Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, p. 60.
[336] As stated in Decision 1/CP.1.
[337] As expected by Article 4.2 (a) and (b) of the UNFCCC.

with the contribution of environmental NGOs. Yet, according to the Indian chief negotiator the Green group represented a "rare example of cooperation between governments representatives and non-governmental organizations"[338]. In particular, environmental NGOs made excellent use of their media contacts to make public who was to be blamed for a potential stalemate.

Against this backdrop, negotiations focused on the contrasting position of the two main blocks, namely the Green Group and the JUSSCANNZ group plus the OPEC countries. Notably, the latter did not want COP-1 to set a negotiating process for the review of developed countries' targets. The "regime laggards"[339] argued that there was no point in setting new targets due to the lack of scientific consensus, and that if so, developing countries had to be included in the issue as well. Notably, the contrast between the US and the EU was particularly evident. While since the beginning the EU had pushed for reaching an agreement with binding emission reduction targets - 15% for Annex 1 countries - the US consistently opposed to such a regulatory approach, calling for a moderate goal of stabilization[340].

Indeed, the contribution of the German counterpart demonstrated great ability in managing the debate. During the last night of the Conference, on the 6th April 1995, the Environment Minister and President of COP-1 Merkel, separated industrialized countries from developing countries, engaging in shuttle diplomacy. The outcomes of this intensive debate led the US delegation to review its stance, which finally agreed to a compromise[341]. In light of these results, despite Kuwait, Venezuela, and Saudi Arabia expressed reservations, none of the countries allied with the US took the responsibility to block consensus. The adoption of the Berlin Mandate marked the beginning of the Kyoto process. The main assumption behind the adoption of the Berlin Mandate was that the 1992 Climate Convention had not established adequate industrialized countries' commitments[342].

Despite the high expectations, the issues related to the setting of targets and their legal aspects, such as their binding nature, coverage of gases or sinks, timing and so forth, were not solved at the Berlin conference. As a matter of facts, a new round of negotiations on "a protocol or another legal

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[338] FCCC/CP/1995/, p 23, as cited in Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, p. 46.

[339] The term was used by Yamin (2000) to refer to the JUSCANNZ countries and OPEC.

[340] Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 8.

[341] According to Oberthür and Ott (1999), the range of concessions made during the negotiations was mainly of a rhetoric nature. For instance, the US was not so enthusiastic in considering the international meeting as a round of "negotiations". Hence, in occasion of the Berlin Mandate the expression was replaced by "process". Likewise, the US opposed to the use of the words "target and timetables", which were changed in "quantified (emissions) limitation and reduction objectives within specified time-frames". Most importantly, the US requested to base the "process" on a set of "analysis and assessment" that could foster proper measures and policies in view of a possible Protocol or another sort of legal instrument. In this respect, Oberthür and Ott conceived the US attitude, and the use of specific expressions, as an attempt for slowing down the Kyoto process.

[342] As established, the review of commitments did not regard developing countries.

instrument"[343] was launched. As previously mentioned, this entailed the review of a large number of related aspects, such as the establishment of bodies of the protocol, decision-making procedures, implementation and non-compliance procedures. Nonetheless, states' major concern regarded with no doubt the establishment of a host of flexibility mechanisms as well as the implementation of national policies and measures (PAMs). In particular, states were extremely concerned about the way in which flexibility mechanisms - joint implementation, international emissions trading - would be included in the agreement. Notably, the main supporters of these mechanisms were the JUSSCANNZ. Notwithstanding, the flexibility debate also involved the EU, which demanded the mutual fulfilment of its targets. In other words, one of the main Union's objectives during the negotiations was that of obtaining the right to combine EU members' individual targets under a sort of bubble, the so-called "EU bubble". Moreover, it has to be pointed out that the EU also strove for the inclusion of PAMs in the AGBM agenda.

To deal with this wide range of issues, creative negotiating techniques as well as a considerable exchange of information were put into practice. Additionally, international organizations, NGOs, and research institutes were also invited to give their contribution. Against this backdrop, eight negotiation rounds, chaired by the Argentinian Raúl Estrada Oyuela, were hold. Each session was dedicated to address a specific topic.

Chronology of the AGBM Process

Session	Dates and Venue	Characterisation/Main Developments
AGBM 1	21–15 August 1995 Geneva	Analysis and assessment
AGBM 2	30 October–3 November 1995 Geneva	Analysis and assessment, EU protocol structure
AGBM 3	5–8 March 1996 Geneva	Analysis and assessment, dispute over science/IPCC
AGBM 4 and COP 2	8–19 July 1996 Geneva	Dispute over science, US support for binding targets, Geneva Declaration
AGBM 5	9–13 December 1996 Geneva	Framework compilation of proposals for further consideration
AGBM 6	3–7 March 1997 Bonn	EU target prop., US Draft Protocol Framework, negotiating text adopted
AGBM 7	31 July–7 August 1997 Bonn	Consolidation of negotiating text
AGBM 8	22–31 October 1997 Bonn (and 30 November 1997 Kyoto)	Proposals by Japan, G-77, US, revised text under negotiation by Chairman

[343] FCCC/CP/1995/7/Add. 1.

Figure 3.2: Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 50.

3.5 Assessing European leadership during the Berlin process.

Similar to the process that led to the adoption of the Framework Convention, the first two sessions held in 1995 served to find agreement over procedures and principles so as to begin drafting the legal document. As regards other issues, little progress was done. The main reason was the same that had slowed down negotiations in preparation for and during the Berlin conference. Laggard countries, namely the US and OPEC countries, were not willing to negotiate over targets and timetables without a further comprehensive analysis on the possible negative impacts of climate measures on their economies. As a result, a second IPCC assessment report was asked by laggards before taking any binding commitment. The report was issued in December 1995, further confirming the close correlation between human activities and the global climate[344]. In the light of the IPCCC report, which was mainly based on US research results, the US administration could not deny its findings any more. The report led the US to a shift of its position, which in occasion of AGMB 3 in 1996, announced that the country was now ready to start negotiating. In addition to this, the US delegation declared that a proposal regarding targets would have been tabled at COP-2. Instead, any concrete proposal was submitted until 1997.

By contrast, the EU seemed to have intensified its within-borders coordination. After the Berlin conference, the EU set up a special Ad hoc Group on Climate Change run by an Expert Group on Common and Coordinated Policies and Measures. The group, which used to meet every month, was responsible for reviewing existing policies and, at the same time, for considering new options in view of the forthcoming negotiations. Apparently, the initiative seemed to have laid the basis for developing a common understanding and improving coordination at the European level in the run up to Kyoto. However, predictions proved to be too optimistic. Against this backdrop, the Commission asked for negotiating a mandate to coordinate the EU position. Before Commission's request, the Council gave a negative response. Yet, several governments firmly opposed to the possibility of transferring even more power to European institutions. As a matter of facts, European policy-making

[344] See Houghton, J.T, Meira Filho, L.G., Callander, B.A, Harris, N., Kattenberg, A and Maskell, K. (1996) "Climate Change 1995: The science of Climate Change", Contribution of Working Group 1 to the Second Assessment Report of the IPCCC, University press, Cambridge, p. 22.

kept remaining in the hands of the country holding the Presidency of the Council[345].

As already illustrated, the member state holding the Council Presidency plays a crucial role, as it is responsible for setting the agenda of the Council, and to chair the sessions of preparatory groups. Most importantly, the member state holding the Council Presidency represents the Union during international negotiations, which flanked by the EU Commission, form the so-called EU Troika. Indeed, during the process that led to the Protocol adoption, not all member states holding the Council Presidency performed the same way. While in some cases limited progress was made, in others remarkable outcomes where achieved.

The years preceding COP-2 were not particularly significant for the EU and its leadership role. With the support of other European delegations, Germany submitted a target proposal, suggesting a 10% reduction within 2005, and a 15-20% reduction to be achieved within 2010[346]. Notably, the German proposal was elaborated to regulate industrialized countries' GHGs emissions only. Conversely, developing countries were not taken into account in this context. This is because since COP-1, and unlike JUSSCANNZ, the EU claimed that before asking developing countries to reduce their emissions, industrialized countries had to show them the way first. Accordingly, much emphasis was given to national policies and measures (PAMs), a key part of the European negotiating strategy. Yet, already in October/November 1995 three types of PAMs were elaborated by the Union. The first type included mandatory, common PAMs; the second category comprised PAMs of high priority; and the third, PAMs to be potentially included in national programmes depending on national circumstances. While countries such as Hungary, Poland, and other central European countries demonstrated their enthusiasm with regard to the European proposal because, as claimed by Yamin[347], they were aspiring to enter the Union nor the US neither the G-77 were willing to support the EU. Yet, the US even refused to submit whatever proposal regarding PAMs, claiming that it was up to each country to decide whether introducing PAMs or not[348]. In any case, at this point, despite the active role played by Germany and other member states, on the eve of COP-2 the EU was still unable to solve its internal problems regarding targets versus PAMs.

As introduced, COP-2 has been defined as the watershed moment of the Kyoto process. Indeed, its final outcome contributed to trace the future direction of the process. In the framework of COP-2, and through the adoption of the Geneva Declaration, the AGBM extended the agreement reached at COP-1, pointing out that the instruments, as well as the agreed targets and timetables,

[345] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, pp 65-66.
[346] *Ivi* p. 52.
[347] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 52.
[348] *Ibidem.*

would have a binding nature for all state parties[349].

Andresen and Agrawala[350] noted that, during COP-2, neither Germany nor the EU as a whole played a key role in moving the process forward. As far as Germany is concerned, the costs of its reunification turned out to be higher than expected. Consequently, other impelling issues rather than climate policy-making ended up occupying the German agenda. Likewise, the EU was stuck in the debate concerning an internal burden-sharing agreement, which took the Union most of its time and energy.

The main responsible for turning COP-2 into a watershed moment for climate negotiations was the US. In this sense, academics agreed on considering the US change of position as the most significant feature of COP-2. Yet, while the Berlin Mandate was not accepted with enthusiasm, in the framework of COP-2 the US changed its position over targets, and demonstrated its willingness to endorse the Geneva Declaration. Given the improved economic situation of the country, the decision of President Clinton on the issue of targets altered the power equilibrium between progressive and laggard forces. The US manoeuvre left OPEC and Russia isolated. Most importantly, it wrong footed the EU.

Despite the EU had constantly called for the establishment of binding targets since the inception of climate negotiations, no formal agreement had been reached within its borders until that moment. As noted by Yamin[351], this failure deeply affected the EU credibility[352] and, above all, the perception that the other negotiators had about the Union. Against this backdrop, the EU position on targets appeared almost rhetorical. Firstly, because no concrete proposals had been submitted yet, and secondly because the few attempts made until that moment demonstrated a lack of in-depth knowledge on what the Union could realistically achieve. Indeed, the fact that the US renewed its political commitment to the climate issue worked as a leverage for the EU, which essentially found itself constrained to elaborate a formal and concrete implementation strategy in order to confirm its leadership role.

Despite the high expectations for an upcoming contribution by the US or the EU, during the fifth session of the Berlin process (held in Geneva between 9-13 December 1996) no concrete proposal was submitted by other parties. Rather, the session concluded with the request for the

[349] See FCCC/CP/1996/15/Add.1.

[350] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 47.

[351] Yamin, F. (2000), "The role of the EU in climate negotiations" in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 54.

[352] Indeed, credibility is a crucial factor when exerting leadership, strictly intertwined with recognition, which has been comprehensively addressed in chapter 2. As noted by Underdal (1994) leadership is a relation between the leader and its followers. In this sense, as observed by Weber (1922), in case followers withdraw their recognition, the leader automatically ceases to exist.

Chairman to assemble a compilation of the most relevant proposals submitted by the parties so far, in order to provide a stable framework for the impeding round of negotiations.

Meanwhile, an intense and controversial policy debate was taking place at EU-level. The fulcrum of the debate focused on the extent to which greenhouse gases emission reductions should have been achieved as well as on which policies and measures needed to be implemented. In order to encourage the decision-making process, the Commission carried out the so-called "pre-Kyoto scenario", a study that shed light on the main consequences the EU would have dealt with, in the absence of CO_2 reduction measures. Considering an economic growth of over 2% a year after 1990, the scenario confirmed a steady increase in CO_2 emissions, estimating a further 8% in the period from 1990 to 2010. Against this backdrop it appeared evident that far-reaching decisions needed to be taken as soon as possible[353].

Energy related CO2 Emissions (mill.t CO2) in the Pre-Kyoto Scenario

MT CO_2		Percentage Change over 1990				
EUR	1990	1995	2000	2005	2010	2020
	3200	-2%	+2%	+6%	+8%	+16%

Sectoral Distribution of CO2 Emissions in the EU (mill. t CO2)

Sector/year	1990	2010	% inc/dec
Transport	743	1032	+39%
Industry	626	532	-15%
Energy Industry	141	158	+12%
Domestic/Tertiary	654	680	+4%
Electricity/Heat Production	1036	1057	+2%
Total emissions	**3200**	**3459**	**+8%**

Figure 3.3: Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, p. 451.

During the first half of the 1996, a proposal for a burden-sharing agreement was tabled at the EU-level. The proposal was first submitted under the Italian presidency. Notably, the Council firmly declared the EU willingness to reach a formal conclusion on the strategy so as to exert leadership and

[353] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, pp 451-452.

give "substantive guidance for the Protocol negotiations"[354]. Indeed, the Union was fully aware of the great opportunity that the burden-sharing agreement represented to take a leadership role in the global setting. Discussions on the issue intensified in the second half of 1996 under the Irish presidency, but no agreement on the EU burden-sharing managed to be reached. Overall, both the Italian and the Irish presidency made little progress. As a consequence, the Union could not present the proposal to AGBM 5, and the issue was postponed for further discussion. Indeed, the obstacles for the achievement of the EU burden-sharing agreement increased political pressure within the borders. Among other things, the Union was aware that the "six month rules" entailed the presentation of a EU target proposal at least six months before Kyoto.

When the Netherlands took over the presidency of the European Council during the first half of the 1997, the country was experiencing a growth in its domestic CO_2 emissions, mainly because of low energy prices and unexpected economic growth. The Dutch domestic situation caused widespread skepticism towards the country, especially in view of the pending issue that needs to be tackled. Nonetheless, this scepticism did not prevent the Netherlands from dealing with the burden-sharing issue. The Dutch engagement became evident when Ms de Boer, namely the Minister for Housing, Spatial Planning and the Environment (VROM), tabled a rather ambitious target in view of the upcoming EU negotiations. In this sense, it is worth noting that at the highest level of the decision-making process many members of the cabinet in the coalition government considered the proposal rather utopian. Despite this scepticism, when the proposal was presented to the Council of Environment Ministers no one objected. It seemed clear that the Dutch presidency was determined to give the highest priority to climate change policy. In this regard, an EU presidency memorandum declared:

> *Climate policy plays an important role nationally in the Netherlands as has been regularly emphasised by the Lower House of Parliament. […] Internationally as well as we are being confronted with a major turning point. During the third Conference of Parties to the World Climate Convention (December 1997, Kyoto, Japan) agreements will have to be made on post-2000 emission reduction. The preparations for this at the European level will have to take place under the Dutch Presidency, which will entail a major effort on the part of the EU president… It is clear that the role of the European Union and the influence*

[354] As cited by Kanie, N. (2003), "Domestic capacity, regional institution and global negotiations: lessons from the Netherlands-EU Kyoto Protocol negotiation", in *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, p. 234.

of the Union on international environmental policy will depend on whether the EU succeeds in deciding on a common position in March 1997[355].

In January 1997, the Dutch presidency submitted its proposal. Overall, it consisted on a plan for an internal burden-sharing mechanism, plus an EU-wide abatement target. The proposal developed by Dutch experts was denominated "The Triptych Approach", precisely because it was based on a sectoral approach[356]. After comprehensive analysis, each member state was divided into three economic sectors, namely the light domestic sector, the export sector, and the electricity generation sector. By taking into account a wide range of dynamics as for instance countries' population changes and economic growth, the emission reduction target of each country was established by adding up the potential for emission reductions in each of these sectors. This bottom-up approach typically used in the field of economic cooperation, provided a useful framework for the EU's internal negotiations, but gave rise to intensive discussions. Several EU members called for the implementation of some adjustments; yet, poorer member states, namely those pertaining to the so-called Cohesion Fund[357] (Ireland, Spain, Portugal, and Greece), were not satisfied with their quota. In order to agree on a compromise between the parties, the burden-sharing mechanism was revised and modified. Based on the discussions that took place at the workshop, the poorer countries obtained the right to increase their emissions, which were compensated by additional reductions for Finland, Italy, and the Netherlands. In this respect, it is worth noting the declaration made at that time by Minister de Boer, who reaffirmed that the contribution of member states was indispensable to strengthen the EU leadership in view of the upcoming Kyoto conference. Minister de Boer stated:

A challenging period is ahead of us an I firmly believe the world is looking to the European Union to play an ambitious leading role in the international negotiating process. That role can never be more than the sum of the commitments individual Member States are willing to make[358].

Paradoxically, the EU burden-sharing agreement may be perceived as a symbolic achievement of the Union; yet, it transposed European aspirations into a concrete strategy, which could only work with

[355] VROM DGM/IMZ/96074893, as cited in Kanie, N. (2003), "Domestic capacity, regional institution and global negotiations: lessons from the Netherlands-EU Kyoto Protocol negotiation", in *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, pp 235-236.

[356] The Triptych Approach was designed by a research group at the University of Utrecht, which apart from possessing a good reputation in the field of energy research, it conducted further comprehensive analysis and research projects so as to develop the proposal.

[357] Massai, L. (2011), "The Kyoto Protocol in the EU: European Community and Member States under International and European Law". The Hague: T.M.C. Asser Press, p. 68.

[358] As cited by Kanie, N. (2003), "Domestic capacity, regional institution and global negotiations: lessons from the Netherlands-EU Kyoto Protocol negotiation", in *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, p. 237.

the engagement of every state member.

Despite some initial opposition from several EU members, such as France, the UK, and the southern European states, when the proposal was analysed by the EU Ad Hoc Group in occasion of the meeting held in February 1997, the response was overall positive. Notwithstanding, the 15% EU reduction target designed for all OECD countries proposed under the Irish presidency appeared rather utopian. In this sense, member states (especially Germany) were fully aware of the fact that setting a target below 10% would have undermined the credibility of the Union in global negotiations. As a result, in March 1997 after intensive discussions, the Environmental Council agreed on a 15% reduction target to be achieved within 2010. The proposal focused on three main GHGs, namely CO_2, CH_4, and N_2O. Notably, even though the Council was much oriented towards national and policies measures, the contrast between them and targets was eventually solved in favour of the latter. Meanwhile, a scheme for the internal burden-sharing agreement was laid down by the Council.

The EU Burden-sharing Agreement of March 1997

Member State	Commitment by 2010
Austria	-25.0%
Belgium	-10.0%
Denmark	-25.0%
Finland	0.0%
France	0.0%
Germany	-25.0%
Greece	+30.0%
Ireland	+15.0%
Italy	-7.0%
Luxembourg	-30.0%
Netherlands	-10.0%
Portugal	+40.0%
Spain	+17.0%
Sweden	+5.0%
United Kingdom	-10.0%
EU-Total	9.2%

Figure 3.4: Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 66.

By looking at the figure above, two main conclusions can be drawn. First and foremost, despite the entity of the target initially proposed, the internal burden-sharing agreement for the time being entailed a reduction of only 10%. Accordingly, the Council decided to leave the discussions on the remaining 5% after the adoption of the Protocol. Despite the internal sharing agreement only accounted for a 9,2% reduction, the scientific rigour of the arrangements made by Dutch experts[359] for its implementation managed to enhance the credibility of the proposal[360].

In addition to this, it is worth stressing that substantial differences can be observed in regards to the commitments of certain countries with respect to others. Member states as Portugal, Spain, and Greece were allowed to increase their emissions significantly. Despite Austria, Luxembourg, and Denmark received the highest targets, academics highlighted that in relation to their possibilities Germany, Netherlands, and the UK took the strongest commitments[361]. In this sense, the pro-active role of the UK is noteworthy[362]. Under the conservative government guided by Prime Minister Major, the UK had constantly expressed its skepticism in relation to EU climate policy. Conversely, when the labor government under Tony Blair took the power, a shift in the UK approach towards European environmental policy-making took place. Notably, the pro-active Blair administration set a domestic CO_2 reduction goal of 20% to be achieved within 2010. Meanwhile, the UK became always more cooperative at the EU-level. Yet, it gradually joined the leading member states, bringing a positive change in the EU climate policy-making equilibrium.

The 15% proposal of the Union aimed at throwing the gauntlet to the JUSSCANNZ countries, especially to the US, which had not defined its position on targets yet. While during the second Conference of the Parties in Geneva the EU seemed to have lost its influence, in occasion of sixth session of the Berlin Mandate it gained ground again, forcing JUSSCANNZ to take the target issue seriously. JUSSCANNZ, especially Japan and Australia, reacted to the EU proposal with severe criticism and great hostility. In this sense, the EU was deeply criticized for agreeing differentiated targets within its borders while denying geographical flexibility and calling for flat rate targets in the other countries[363]. Furthermore, the EU proposal was defined as rather unrealistic and unachievable. Despite numerous criticisms, after the great achievement reached by the Dutch delegation, the EU stuck to its position on the issue, forcing the other OECD countries to present similar ambitious

[359] Kanie (2003) claimed that the design of the Triptych Approach was indeed well architected, and laid on concrete scientific research.
[360] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, p. 454.
[361] Van der Gaast, W. (2017), "The Negotiation Process Leading to the Kyoto Protocol", in *International Climate Negotiation Factors.* Cham*:* Springer, p. 64.
[362] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 47.
[363] Countries criticisms regarded the so-called "EU bubble", which is one of the issues illustrated in chapter four.

targets. Neither the text put forward by the US nor the proposals of the other countries contained significant progress with respect to the one made the EU.

Meanwhile, the Commission further complemented the Council achievements, by requesting other resources to be allocated to the ALTENER programme for the promotion of renewable energy, which was part of the Climate Change Package elaborated in the first half of the 1990s. At the same time, it also proposed new initiatives to establish energy product taxes (oil, natural gas, coal and others), and outlined a host of strategies for further emission reductions[364].

On the whole, it can be observed that the Environmental Council, the Commission, and member states combined their efforts in order to strengthen the European influence in the global climate negotiations. There is general acceptance among legal scholars, to consider the Union's position on targets as the "pinnacle of EU leadership"[365] in the process leading to Kyoto. According to Yamin, the ambitiousness of the EU in setting such a challenging target forced the other parties, especially the US and Japan, to consider an effort of this magnitude. Most likely, without the European engagement, the targets contained in the Kyoto Protocol may have been much lower[366]. In particular, the Dutch performance was indeed of utmost importance as it remarkably strengthened the European leadership. Faure et al.[367] pointed out that despite the limited influence of the Netherlands in terms of power and resources, the country managed to play a leading role in the Kyoto process. In this sense, academics define countries like the Netherlands as "middle powers", since despite their lack of structural power, they can still exert leadership either through unilateral action (directional leadership) or instrumental action (entrepreneurial leadership). In the attempt of maximizing the potential impact of these kinds of leadership, middle powers can take advantage from the power of regional organizations. As claimed by Faure et al., when the Dutch delegation held the Council Presidency, the EU acted as an "intermediating regional institution"[368].

According to Faure et al.[369], three elements contributed significantly to the Dutch success. In the first place, academics stressed the country's ability to make use of the Union influence so as to increase its power and exert intellectual as well as instrumental leadership. Indeed, the remarkable capacities of the Dutch delegation were widely recognized. At the same time, the cohesion of the EU as a coalition gave an important contribution to the global negotiation process, as it increased the

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[364] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 67.
[365] As cited by Yamin, F. (2000), "The role of the EU in climate negotiations" in *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 55.
[366] *Ibidem.*
[367] Faure, M., Gupta, J. and Nentjes, A, (2003), "Key instrumental and institutional design issues in climate change policy" in *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, p. 11.
[368] As cited by *ibidem.*
[369] *Ivi* p. 12.

credibility of the Union as a powerful bloc. Ultimately, the institutional design of the EU proved to be extremely useful too. As a matter of fact, by holding the Council presidency, the Dutch delegations acquired a high degree of internal and external political power, which accorded to the country a certain space for manoeuvre.

In the framework of the seventh session of the Berlin process, the EU Environmental Council complemented its proposal by submitting an intermediate target of 7.5% to be achieved by 2005. As stressed by Palinkas[370], the EU together with the Alliance of Small Island States were the only grouping of states to table a short-term reduction target. Conversely, the US and other countries only agreed to medium and long-term targets (2010 and 2020). Unlike the EU, and less than half a year before the Kyoto Conference, JUSSCANNZ members had not tabled any kind of target proposal. Therefore, the meeting set up a range of informal groups which proceeded to deliberate on four main topics: institutions and mechanisms, targets and timetables, national policies and measures, and the improvement of the commitments enshrined in article 4.1 of the Convention. Discussions on the issues did not lead to any concrete result. Therefore, the Chairman found himself to prepare a negotiating text with a limited amount of material at his disposal[371].

It was only in the run up to the 8th session of the Berlin process that Japan, rather concerned to ensure a successful outcome at Kyoto, tabled its targets proposal. Shortly after, it also followed the proposal of China and the G-77. Indeed, much attention was paid to the President Clinton's discourse, which announced the US position in view of the upcoming Kyoto conference. President Clinton claimed that the US was committed to reduce its emissions (a basket of six greenhouse gases) to the 1990 levels between 2008-2012. Furthermore, and even though it did not fall within the Berlin Mandate competences, the US demanded to include in the Protocol the mechanisms of joint implementation and emissions trading. The US was heavily criticized for its request, especially from the G-77 and China, which reminded the country that the proposal was in conflict with the Berlin Mandate[372].

When the 8th session of the Berlin process took place in Bonn in October 1997, proposals from all major players (except Russia) were on the table. Indeed, countries' positions largely differed. Chairman Estrada tried his best to find compromises among the parties, and even though the wide range of options managed to be downsize, the meeting failed to close the gap. Notably, during the 8th session of the Berlin Process crucial negotiations did not take place in Bonn context but rather outside

[370] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, p. 455.
[371] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 56.
[372] Van der Gaast, W. (2017), "The Negotiation Process Leading to the Kyoto Protocol", in *International Climate Negotiation Factors.* Cham*:* Springer, pp 66-67.

the institutional context. Yet, the key actors (namely the US, Japan, and the EU) engaged into bilateral talks and shuttle diplomacy activities. In view of the forthcoming Kyoto conference, the US delegation visited EU member states' representatives, and Japan, being the host of the conference, had regular contacts with both the US and the EU[373]. Overall, at the 8th session of the Berlin Process, parties succeeded in reaching agreement on the Preamble as well as on a wide range of institutional issues, such as subsidiary bodies, the settlement of disputes, possible instruments for amendments and many others. Nonetheless, with regard to the most hotly debated issues, no compromise was reached. In other words, the crucial issues were postponed to the Kyoto conference[374].

With regard to the EU, its final negotiating position was finally published in October 1997, in a Communication denominated "Climate Change – The EU Approach for Kyoto"[375]. The document re-stated the impellent need of reaching a common agreement on GHGs emission reductions in the Kyoto framework. It illustrated the way in which the 15% target proposed by the Union could be achieved within the agreed span of time. Despite the wide range of criticism that came from the other parties, the EU concluded that the target was technically and economically achievable. Notably, the communication clearly stated that if the target was achievable at the EU-level, so would be for all industrialized countries[376]. However, the Union was fully aware that unilateral action in the climate change issue was not enough. Indeed, in order to achieve the objectives set by the international community, all industrialized countries had to contribute with their reduction efforts. In this sense, the EU called for a constructive involvement of the US, and being the host of the conference, Japan.

In this respect, Palinkas[377] made a comprehensive analysis on the final EU negotiating position in view of the Kyoto conference. He argued that the European initiatives resulted much more far-reaching oriented that the ones of the US, which was unanimously considered by academics as one of the major players as well as crucial contributor for the positive outcome of the Kyoto conference. At the same time, Palinkas highlighted that despite their degree of ambitiousness, the EU's proposal lack of concrete content. For instance, among the list of proposals designed to reduce CO_2 emissions, only few of them contained the suitable instruments so as to properly implement these initiatives. If so, no detailed information regarding the capacity of these options to limit CO_2 emissions was provided. In addition to this, the EU proposals put much emphasis on the need of combining the energy dimension with other structural or sectoral policies (industry, transport, urban

[373] *Ibidem*.
[374] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 58.
[375] COM (97) 481.
[376] COM (97) 481, p. 18.
[377] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4.

development). Again, the communication did not include any specific measures in this regard. The same goes for the request of joint cooperation that entailed the involvement of all industrialized countries. The Union stressed the importance of international cooperation; however, no specific proposal was made in order to put into practice such cooperation[378].

According to Palinkas, the main causes for the inconsistent approach of the EU are strictly connected to its institutional weaknesses. Among these, the most significant regards the limits posed on the use of legal powers in the environmental field, the restrictions caused by the subsidiarity principle, the limited rights of participation of the European Parliament[379], and the precedence given to economic sector over environmental issues. Against this backdrop, demanding the active involvement of all industrialized countries without having first provided a concrete example through constructive policy-making appears rather utopian[380].

[378] *Ivi*, pp 456-457.
[379] According to Lenschow (2010) the EP can be considered the 'greenest' environmental policy making body of the Union with respect to the Commission and the Council. Notably, the EP's involvement in environmental policy making has been witnessed by its role of intermediary between the Commission and the citizens, as it passed on to the former the most meaningful citizens' petitions.
[380] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, pp 456-457.

Chapter 4. The adoption of the Kyoto Protocol

Index: 4.1 The Kyoto compromise. - 4.2 Approaching Kyoto: EU and US climate change policy in comparison. - 4.3 The negotiating process. - 4.4 The architecture of the Protocol: EU successes and failures. - 4.5 Reflections on the EU performance: did the Union succeed in exerting a leadership role in the Kyoto negotiations?

This chapter focuses exclusively on the dynamics that took place in occasion of the Third Conference of the Parties in Kyoto. To begin with, the chapter briefly outlines the most significant moments of the Protocol's negotiation process, paying particular attention to the contribution given by the EU in this framework (Section 4.1 – 4.3). After that, it provides an overview of the Protocol's design as well as its key aspects. In this sense, much emphasis is given to articles 2, 3, and 4 as, apart from regulating some of the most controversial issues of the Protocol, they are crucial to examine the role played by the EU in COP-3 (Section 4.4). To conclude, the chapter offers a host of considerations with regard to the leadership role of the EU in contrast to the other main international actors (Section 4.5).

4.1 The Kyoto compromise.

The Third Conference of the Parties (COP-3) is considered by academics as one of the most striking and noteworthy events in the history of international environmental diplomacy. The Summit was held from 1 to 10 December 1997 in Kyoto, under the auspices of the Japanese government. Among other things, the scale of the event was also confirmed by the outstanding number of participants; yet, COP-3 brought together more than 2,200 delegates from 158 parties to the Framework Convention as well as a wide range of representatives pertaining to intergovernmental organizations, NGOs, media and the press.

After ten days of non-stopping formal and informal negotiations, including a session that took place on the final evening and lasted until the following day, a Protocol linked to the UN Framework Convention was eventually adopted[381]. In light of the above, Annex I parties to the Convention agreed to reduce their overall GHGs emissions by at least 5% below 1990 levels within the period going from 2008 to 2012, namely the first commitment period of the Protocol.

[381] https://unfccc.int/resource/docs/convkp/kpeng.pdf.

First and foremost, it is worth pointing out that COP-3 attracted a considerable degree of public attention on the issue of climate change, especially in developed countries. Yet, the public had high hopes regarding the possibility of reaching an international agreement without precedents in the Kyoto framework. In this sense, the interplay between the numerous environmental NGOs and the media proved to be fundamental so as to raise awareness on the issue of climate change. While the former organized conferences and published background material, the latter played a crucial role in raising public pressure. Some NGOs had even established direct contacts with journalists, who then transmitted the information to a broader public. As a matter of facts, these dynamics inevitably resulted in a widespread knowledge of the issues at stake, not only among institutional actors but also among the public. Most importantly, negotiators felt that the world was watching. Therefore, they became fully aware of the fact that any attempt to slow down the development of the negotiation process was unlikely to go unnoticed. In this way, both NGOs and the media contributed to increase the accountability of all negotiators that took part to the conference. Clearly, as noted by Oberthür and Ott[382], public pressure increased the willingness of all parties to reach a compromise, mainly because they knew that whether they had attempted to hamper the successful outcomes of the Kyoto conference, they would be inevitably blamed later.

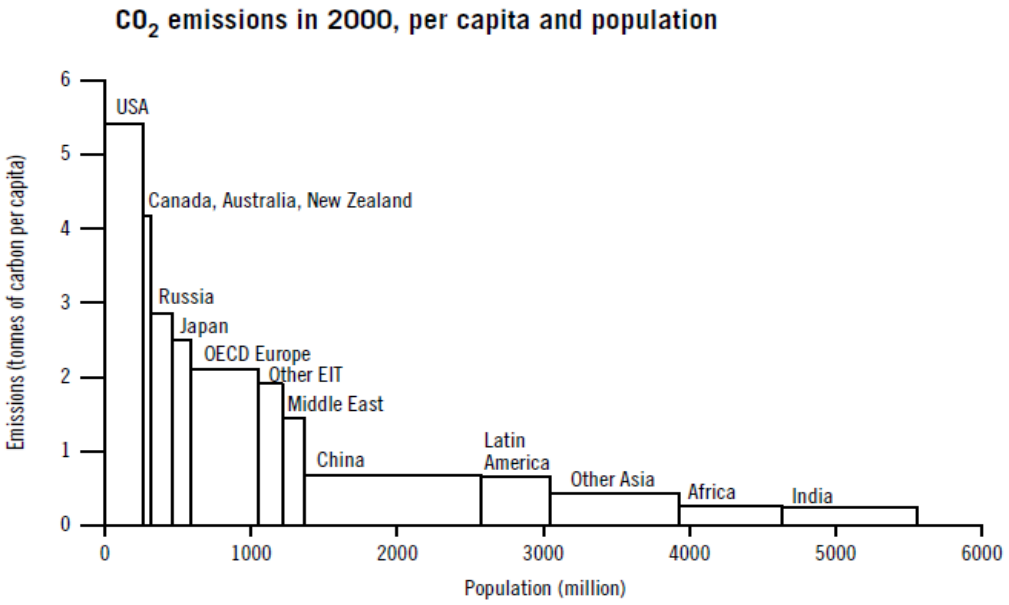
One of the international actors mostly eager to secure the achievement of the agreement, thus demonstrating its active involvement in the development of negotiations since the very beginning, was the hosting country of the Summit, Japan. Since the location for the forthcoming Summit was agreed at COP-2 (in July 1996), the country was expected to perform a role of leader during the conference, so as to ensure (or at least to facilitate) the conference proceedings. Notably, this is mainly the reason why the Japanese delegation invited the other key counterparts[383] to participate to three informal meetings in Tokyo, just few months before COP-3 took place. The first two meetings were dedicated to discuss about industrialized countries' commitments. Nonetheless, no significant progress was made; rather, the meetings only served to gather the chief international actors for an informal exchange of views. Conversely, the last meeting held at the beginning of November 1997 proved to be much more successful as it paved to way for compromise between developed and developing countries[384]. Yet, one of the main issues addressed during the third informal meeting concerned the developing countries involvement into the Protocol. Furthermore, the Japanese government tried to reconcile the opposing visions of the US and the EU on targets, helping the ministers to better understand each other. Between the two, the EU seemed to be the part more

[382] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer Verlag, pp 82-83.
[383] Representatives of both JUSSCANNZ and the EU took part to the informal meetings.
[384] In this framework, Brazil and the US laid the basis for what was to become the Clean Development Mechanism.

inclined to compromise. Reportedly, Italy and France admitted to the Japanese delegation that the 15% target initially proposed by the EU would have been extremely challenging to reach. In this framework, the Japanese host declared that "the first concrete step was made towards compromise"[385].

Contrary to the proactive approach adopted by the Japanese delegation during the three informal meetings, the country played a limited role at the Kyoto conference itself. Yet, the Japanese government decided to keep a relatively low profile in the attempt to find some middle ground between the US and the EU.

Although a high degree of attendance characterized the Summit, academics unanimously agreed on considering the EU and the US as central actors in the Kyoto process[386]. Indeed, since the Berlin Mandate was established, it became clear that only a small group of countries would play a key role in shaping the final text of the Protocol. Among developing countries, China and India were at the forefront in rejecting the US proposals regarding developing countries' commitments in the Protocol, either in the form of voluntary policies and measures or as flexible emission budgets. In this respect, the EU was crucial in softening the disagreement between the US and the G-77&China on legally binding commitments for developing countries[387]. As explained several times during the course of this study, the Union had often pointed out that industrialized countries must take responsibility in the climate change framework, showing the way to developing countries as well.



[385] As cited by Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer Verlag, pp 78-79.
[386] Damro, C. and Luaces-Méndez, P., (2003) "The Kyoto Protocol's emissions trading system: An EU-US Environmental Flip-Flop", Working paper No. 5, p. 1.
[387] Van der Gaast, W. (2017) "The negotiating process leading to the Kyoto Protocol" in *International Climate Negotiation Factors*. Cham: Springer, p. 71.

Figure 4.1. Source: Grubb, M. (2003), "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, p. 145.

The graphic above confirms what has just been asserted. It clearly shows that developing countries' emissions during the Kyoto era were much lower with respect to those of industrialized countries, among which the US stands out indisputably, followed by other JUSSCANNZ members and the EU. Against this backdrop, it is more than understandable which countries were expected to take responsibility first. In this respect, it is worth noting that the contrast regarding developing countries' commitments was not the only issue that marked the difference between the opposing policy approaches of the US and the EU. For this reason, it is particularly useful to analyze the negotiation process in terms of the conflicting positions of these two actors.

4.2 Approaching Kyoto: EU and US climate change policy in comparison.

Traditionally, as far as the issue of climate change is concerned, the EU and the US have been usually portrayed as sitting at the opposite ends of the negotiating table. However, the nuances of historical climate negotiations are many, and such a generalization is indeed neither precise nor helpful to understand the contrasts emerged between these two actors during the Kyoto era.

To begin with, it is worth highlighting that, by and large, US politics has always been much more inward-oriented with respect to EU politics. Put it differently, citizens and, as a consequence, US politicians as well have been historically inclined to focus more on issues of domestic policy rather than on international questions. In this sense, Carlarne[388] claimed that this tendency to skepticism has deeply influenced the approach adopted by the US in international relations, especially with regard to climate change issues. Notably, Carlarne also pointed out that when US resources have to be employed to solve issues of international law, the country's hostility increases even further, no matter which kind of interests are at stake.

Another relevant perspective provided by Carlarne in this context regards the features of the institutional framework of the EU and US respectively which, according to him, had a great influence in defining climate change policy-making in these two countries as well as their leadership role. As regards the EU, acting as a supranational entity in a regional integration organization, it overall

[388] Carlarne, C.P. (2010), *Climate Change Law and Policy: EU and US Approaches*. NY: Oxford University Press, pp 259-260.

succeeded in coordinating member states' positions, therefore playing a crucial role in setting the agenda for international climate negotiations[389]. Conversely, US climate change politics has been deeply affected, among other factors[390], by numerous pushes and pulls between sub-federal actors and the federal government, where the former kept encouraging innovation and progress, and the latter attempted to oppose to any substantial change. Put it differently, unlike the federal government, which struggled to develop a widespread consensus on a proper line of action in response to climate change, the Union has generally managed to speak with a unified voice representing 15 independent states, despite being often riddled with "inter-state bickering"[391].

The line of reasoning provided by Carlarne seems to explain why in the Kyoto framework the US favored a rather flexible approach with respect to the EU, which actively pushed for binding international measures to curb GHGs emissions since the beginning of the negotiating process. In this respect, Damro and Méndez conceptualized in broad terms the US approach to international climate policy "as one of free market environmentalism, in which faith is placed in market-base solutions"[392]. Conversely, the EU has always been rather wary towards market-based solutions, favoring prevention to cure. As a matter of facts, the Union has often chosen to address the problems caused by climate change with regulatory solutions[393]. Among other things, this is the main reason that led the EU to develop its environmental policy by imposing uniform and detailed directives.

According to Damro and Méndez[394], the EU approached the Kyoto summit with a more complicated position with respect to the US. In this sense, it is worth remarking that since environmental policy is an area of "mixed competence" within the Union, both the EU and member states would become signatories to the Protocol. Such a mechanism caused numerous complexities in terms of relations between the EU and member states and, at the same time, it led third parties to question about which actor was responsible to implement the issues during the negotiating process. In this sense, it is worth stressing that even though the EU Presidency along with the member states had considerable space for maneuver during the negotiating process, their stances reflected the guidelines previously established by the Council of Ministers, via the so-called Burden-Sharing agreement. The EU bubble agreement, which distributed the level of CO_2 emissions reductions/increases within its borders according to sectoral and national criteria, became the Union's

[389] In this sense, there is no doubt that the combined efforts of member states proved to be fundamental for the consolidation of EU's climate change leadership role.
[390] As already illustrated in chapter two, lobby interests have always played a crucial role in US climate change policy-making.
[391] As cited by Carlarne, C.P. (2010), *Climate Change Law and Policy: EU and US Approaches*. NY: Oxford University Press, p. 253.
[392] As cited by Damro, C. and Luaces-Méndez, P., (2003) "The Kyoto Protocol's emissions trading system: An EU-US Environmental Flip-Flop", Working paper No. 5, p. 3.
[393] *Ibidem.*
[394] Ivi, p. 4.

starting point to deal with Kyoto negotiations.

Overall, on the eve of Kyoto, the EU Troika (composed by the UK, the Netherlands and Luxembourg) reiterated the Union's position in the following terms: first of all, it refused differentiation, calling for a guarantee of comparable commitments at least for the main industrialized countries. In this respect, the EU suggested a 15% GHGs emission reduction target for developed countries (the highest target ever proposed in the Kyoto framework), while postponing the discussions regarding developing countries' commitments for the future. Notably, it declared that any "environmental detrimental loopholes"[395] would be unacceptable. The Union then affirmed its willingness to compromise over strong targets and domestic action, monitoring, sanctions and market safeguards as well as over joint implementation with rules and safeguards. Notwithstanding, as concerned coordinated policies and measures, the Union required them to be mandatory. Furthermore, it recommended a "three plus three" gas proposal (CO_2, methane and nitrous oxide in the first place, followed by HFCs, sulfur hexafluoride and PFCs)[396].

The US stance went in direct contrast with the ambitious approach undertaken by the EU. Prior to Kyoto, the 1995 Climate Action Report had reiterated the US intention to solve climate change issues via market-based solutions[397]. As noted by Grubb:

> *Economically, US thinking was dominated by general equilibrium concepts which automatically imply that flexibility achieve the same environmental benefits at lower costs; hence, the more flexibility, the better*[398].

In this context, the 1997 US events proved to be of utmost importance, since they contributed to define the country's approach in the framework of the Kyoto summit. Yet, when members of the Congress became aware of the Protocol's implications, their concerns about the competitiveness of the US economy started to increase visibly. Against this backdrop, a Democrat from West Virginia, Senators Robert Byrd, and a Republican from Nebraska, Chuck Hagel, introduced a "sense of the Senate"[399] resolution, which expressed the opposition to the treaty. Strikingly, the Byrd-Hagel Resolution (Public Law 105-54[400]) passed on 25 July 1997, by a vote of 95 to 0. The resolution was clearly attempting to warn the Clinton administration of the serious consequences that the Kyoto

[395] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 5.
[396] Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, p. 71.
[397] Damro, C. and Luaces-Méndez, P., (2003) "The Kyoto Protocol's emissions trading system: An EU-US Environmental Flip-Flop", Working paper No. 5, p. 3.
[398] Grubb, M. (2003) "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, pp 183-184.
[399] The expression "sense of" is used to express the opinion of a majority of the chamber's members. Despite this, "sense of" resolutions do not create law, do not require the signature of the US President, and are not enforceable.
[400] The Byrd-Hagel Resolution, Public Law 105-54, Available online at https://nationalcenter.org/KyotoSenate.html.

treaty would have almost certainly provoked to the American economy. Most importantly, the resolution stated its great dissent regarding the special treatment reserved to developing countries within the Protocol. Indeed, as explained previously, the US considered the involvement of all the largest emitters, including Brazil, China, India and South Africa absolutely indispensable.

The Byrd-Hagel Resolution is the perfect example of what Putnam defined "a two-level game"[401]. Yet, while negotiating at the international level, governments are called to deal with the heterogeneity of views existing at the national level. Considering the wide range of interests at stake when such hotly debated topics are discussed, lobby pressures cannot be overlooked.

On the whole, what clearly emerged from the picture provided is a deep-seated skepticism of the US towards the efficiency of multilateralism, and most in general towards the UN framework[402]. The resolution did not miss its target completely; President Clinton and his advisors decided to adapt their negotiating stance in the run up to Kyoto in order to conform to the requests of the Senate. The US delegation sent to Kyoto comprised a wide range of representatives coming from departments such as State, Treasury, Defense, Agriculture, Energy, which were obviously flanked by representatives of the Environmental Protection Agency as well as by the US Agency for International Development. The delegation, which enclosed a vast array of interests and agendas, was involved in defining and implementing the US position at Kyoto.

Overall, the meaningful participation of developing countries in the Protocol kept being reiterated. Additionally, the US declared its willingness to favor a target based on all GHGs' sources and sinks founded on flexibility. Likewise, it extended flexibility on bounded differentiation, and proposed a working group to discuss about the issue so as to find a compromise. Not surprisingly, the US became since the beginning the main advocate of market-based mechanisms such as joint implementation, emissions trading, and clean development mechanism. Notably, the US became extremely concerned about the EU proposal to limit emissions trading as well as the EU's targets proposal which, according to the US delegation, was formulated by the Union in light of the economic advantage deriving from the bubble agreement[403].

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[401] Putnam, R.D., (1988), "Diplomacy and domestic politics: The logic of two-level games", *International organization*, Vol. 42, No. 3, pp 427-460.

[402] Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 5.

[403] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 3.

4.3 The European role within the framework of the Kyoto conference.

The eight sessions held by the Ad Group of the Berlin Mandate between August 1995 and November 1997 were dedicated, as established by the Berlin Mandate, to deal with all sort of issues that would become part of the Protocol. As already clarified, the less controversial aspects of the Protocol such as the preamble, the provisions concerning the role of organs, how to settle disputes, amendments, the right to vote, and so forth managed to be largely agreed. Instead, the most problematic issues regarding for instance targets differentiation, number of GHGs covered, national measures and policies as well as the extent to which joint implementation, emissions trading, and the EU "bubble" would be allowed to be employed, still needed to be comprehensively agreed[404]. Consequently, a host of pending issues was left to be addressed in Kyoto.

Before starting the conference officially, a one-day resumed session of the *Ad Hoc group of the Berlin Mandate* took place, so as to take stock of the overall state of the debate, and to draw the necessary conclusions[405]. The COP-3 officially opened the day after at the Kyoto International Conference Hall, in Kyoto. To describe the course of events, Oberthür and Ott[406] divided the Summit in two main phases. The first week served mainly to bring the parties together, and start looking for a compromise. By contrast, delegations' activities heightened during the ministerial meeting held from 8 to 10 December, which then culminated in the final shut down on 11 December. During the Summit, delegations met both in plenary (to consider the more general issues of the COP) and in a sessional Committee of the Whole (COW). The COW was chaired by Raoul Estrada-Oyuela, who had previously served as chairman of the International Negotiating Committee (INC) after Rio.

Indeed Chair Estrada deserves a special mention, since he was unanimously depicted by legal scholars as one of the personalities who contributed to the successful completion of COP-3 negotiations the most[407]. Actually, his role proved to be crucial in moving the negotiation process forward even before COP-3, since the formation of the INC in 1990. As a result, when the Kyoto conference took place, he intimately knew the key players' positions concerning the most relevant issues and, therefore, he closely followed their development. In the build-up to the Kyoto summit, Estrada was fundamental as he narrowed down the range of options discussed, and simplified the final negotiation text. Despite numerous controversies and disagreements among the parties, Estrada managed to safeguard the principle of common but differentiated responsibilities throughout the

[404] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 79.
[405] The session focused on the issue of sinks, but it resulted inconclusive.
[406] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, pp 79-81.
[407] See for instance, Van der Gaast, W. (2017) p. 84, Oberthür, S. and Ott, H.E. (1999) p. 84, Andresen, S and Agrawala, S. (2002) p. 48.

process and, at the same time, to concede to developed countries some flexibility for the achievement of their commitments. Indeed, Estrada had constantly demonstrated his willingness to reach agreement in Kyoto. For this reason, he constantly struggled to bypass the problem of requiring consensus for adopting protocols. Furthermore, deeply in contrast to his predecessor, Jean Ripert of France, who had driven the negotiating process of the 1992 Framework Convention in a more traditional style (trying to stay as much neutral as possible) Estrada intervened frequently in the debates, sometimes even arguing with delegations because of their attitude, asking them to review their arguments before presenting them. According to Oberthür and Ott[408], Estrada (alongside the US Vice President Gore) played an outstanding leadership role throughout the whole Kyoto process.

COP-3 negotiations were conducted on the basis of a list of articles which had been tabled by parties during the Berlin Mandate process. For each article, several text proposals were formulated. Given the great complexity characterizing the nature of the aspects not yet solved, the COW set up three main negotiating groups so as to discuss about: institutional and mechanisms issues, commitments of developing countries within the Protocol, and national policies and measures. In this respect, it has to be noted that Estrada himself presided over the targets' and timetables' debate, one of the most hotly debated issues of the Protocol. Notably, Estrada had always been convinced that differentiation of commitments would be the key of the entire negotiation process. As a matter of facts, he steered the process towards this direction.

In order to integrate the debate of the working groups even further, the COW also established several informal groups to deal with issues such as joint implementation, emissions trading, and voluntary commitments. Finally, apart from the debates fostered in the framework of the COW, delegations had regular meetings within their group (EU, JUSSCANNZ, OECD, G-77 and China, AOSIS), and established bilateral and multilateral contacts with other delegations as well.

As predicted by Estrada, the most controversial aspect negotiated at COP-3 was with no doubt Article 3 on QELROs. Apart from the well-known proposal already tabled by the EU, which entailed a bubble for the EU and flat-rate targets for the other parties, the first "big-bubble" proposal came from the Russian Federation. Shortly after, noting that there were too many unresolved issues concerning QELROs, Estrada proposed a -5% target for Canada, the Russian Federation, the US and Ukraine, and a -4.5% for Japan. Meanwhile, Australia and Norway were requested to limit the GHGs emissions to 5% above their 1990 levels. Overall, the proposal entailed that industrialized countries would reduce their emissions by 5% below 1990 emission levels. With respect to the Estrada's proposal, it is worth clarifying that the differences among targets were calculated according to the

[408] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 84.

different national circumstances. Likewise, Estrada suggested working from the presumption that the Protocol would cover six gases[409] rather than three as initially established. Against this backdrop, by the end of the first week of the conference, Estrada submitted a new draft text to the COW, stating that the proposal would be treated as a "take it or leave it" offer[410].

The final and most decisive phase of COP-3 was marked by the arrival of the US Vice President Gore. His direct involvement was considered by the international community as a demonstration of the US administration's willingness to reach an agreement in Kyoto. Yet, at the opening plenary of the Ministerial Segment on 8 December 1997, Vice President Gore showed increased negotiating flexibility (as requested by President Clinton), but kept reiterating the US stance. In the first place, he restated the importance of including key developing countries in the Protocol, one of the greatest concerns of the country. He then called for the establishment of reasonable targets and timetables, stressing the crucial role played by market mechanism in this respect[411].

In the final stages of the negotiating process, discussions over sinks, emissions trading, and joint implementation continued. Notably, the debate over the exact size of the targets intensified among the three main players of the COP, namely the US, the EU, and Japan. In the meantime, the other delegations waited for the outcome of the trilateral talks so as to define their stances as well. The debate among the three countries managed to narrow down the options, thus getting closer to an agreement.

When the speed and the intensity of the negotiations began to increase, it became clear that the EU was struggling to exert its influence. As expected, the EU weaknesses gradually came to light, thus affecting its performance. Once again, the EU's leadership ability had been seriously undermined due to its complex decision-making process, and remarkably because of its lack of internal unity.

With respect to the intra-European level, Fernandez[412] stressed that one of the most problematic issues when it comes to deal with climate change regards the choice of the Union's representatives at international negotiations. Once assessed that climate change is a shared issue, it is of utmost importance for the European Commission, the Council, and national representatives, to agree on a common position. In this sense, it has been noted that in recent times member states prefer to appear as prime actors during negotiations. Therefore, when the willingness to cooperate with each

[409] Carbon dioxide (CO_2), nitrous oxide (N_20), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF_6).
[410] As cited by Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, p. 72.
[411] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 5.
[412] Fernandez M, R.M. (2012) "The European Union and International negotiations on Climate Change. A limited role to play", *Journal of Contemporary European Research*, Vol. 8, No. 2, pp 199-200.

other lacks, it becomes quite difficult to agree on a common position[413]. What is more, when considering the complex operational system of the Union, reaching consensus is often challenging, especially because of the rotating Presidency, which implies keeping contacts with the previous Presidency as well as the incoming one in order to coordinate efforts.

As for the international level dynamics, the analysis carried out by Bäckstrand and Elgström[414] is worth of notice. Indeed, they agreed with Fernandez on considering the complex dynamics taking place at the institutional level as fatal for the Union's international stance. In the first place, they stressed the fact that contrasts and disagreements among member states lead to credibility problems in relation to other international actors. Likewise, disunity pave the way for incoherence, either between "words and deeds"[415] (as the Union was not able to implement its promises due to its internal struggles), or even between different EU actors (since counterparts received different messages depending on the institutional actor they had contact with). Furthermore, according to Bäckstrand and Elgström[416] when similar circumstances emerge, it becomes extremely convenient for the other actors to put member states against each other, weakening in this way the EU possibilities to succeed in speaking with a single voice.

Overall, these were the main causes that prevented the Union from exerting the leadership role to which it was aspiring within the Kyoto framework. Indeed, problems of disunity as well as complications in the EU decisional process had already been noted by scholars[417] long before Kyoto. Likewise, such dynamics kept taking place also during COP-3.

Among the three member states composing the then EU Troika (Luxembourg, the Netherlands, the UK), the Deputy Prime Minister John Prescott of the UK delegation attempted to take leadership. Notwithstanding, every change of stance or proposed concession had to be formally approved among member states. Against this backdrop, several EU countries not directly involved in the negotiations (Germany in particular[418]) became extremely concerned that the Troika could make too many concessions to other parties, complicating in this way the EU stance even further. On the contrary, not only did the time-consuming process needed to reach consensus prevent the EU from participating actively in the negotiations, but it also impeded to respond to other delegations' proposals with flexibility. Yet, in more than one occasion, the EU group was caught while discussing about issues that had already been agreed during the formal negotiations. In light of these

[413] Eppstein et al., (2010), as cited by *ibidem*.
[414] Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 1374.
[415] As cited in *ibidem*.
[416] *Ibidem*.
[417] See Palinkas, P. (1998), Oberthür, S. and Roche Kelly, C. (2008).
[418] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 15.

circumstances, which worsened even more as the final night of the conference was approaching, the EU ended up being criticized for its "bunker mentality"[419].

In the final night of what the delegate of Tanzania called a "negotiation by exhaustion"[420], a draft text of the Protocol was distributed among delegations so as to initiate the session. However, the annex containing the exact numbers of industrialized countries' commitments still needed to be filled. Chairman Estrada drove the entire session by following the same route tested at the 8th session of the Ad Group on the Berlin Mandate. In particular, whenever agreement on a specific issue could not be reached, he took a decision on behalf of the assembly. In order to express its disagreement on a given matter, a delegation was required to formally challenge the ruling, and manage to obtain a two-thirds majority so as to overturn it. Actually, nobody dared to raise such a challenge, since all delegations were fully aware of the fact that, in this way, the whole process could have been jeopardized. Among other things, once a decision had been taken, no one could re-open it, not even the chairman. Oberthür and Ott[421] argued that the "Estrada's use of the gavel" became one of the most distinguishing feature of the session.

Discussions proceeded article by article. The debate revolved mainly around the provisions needing for adjustments such as QELROs, emissions trading, and voluntary non-Annex I commitments[422]. Several changes were proposed and discussed by delegations; however, modifications were adopted very rarely. Rather, the majority of them ended up being dismissed by Estrada's gavel. Meanwhile, EU Ministers were still struggling to coordinate their positions. Reaching agreement among member states proved to be more difficult than decision-making in the COW. For instance, as regards the dynamics of the Clean Development Mechanism, the EU group presented its position to the Chairman only when the decision had already been taken and could not be reopened. By contrast, the US had set its objectives clearly, and strove to reach them until the very end. Yet, the US delegation demonstrated to be rather organized, and tried to gain ground as long as it could by rotating its chief negotiator every few hours[423].

On Thursday 11 December, the final COP-3 Plenary convened to adopt the Kyoto Protocol[424]. When the final draft of the agreement was presented, both EU successes and failures came to light.

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[419] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 87.
[420] As cited in *ivi*, p. 89.
[421] As cited in ivi, p. 89.
[422] IISD (1997b). Report of the Third Conference of the Parties to the United Nations Framework Convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, pp 6. See also, Boehmer-Christiansen, S., and Kellow, A., (2002), International Environmental Policy: Interests and the Failure of the Kyoto Process, Edward Elgar Pub, Northampton, MA, p. 76.
[423] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 90.
[424] FCCC/1997/L.7/Add.1.

In this respect, it has to be stressed that even though the agreement managed to be finalized, some of its key provisions remained skeletal in character and needed further elaboration.

Reportedly, the EU's role was celebrated by NGOs[425], as apparently it resulted to be crucial in targeting the flexible approach adopted by JUSSCANNZ throughout the Kyoto process. Actually, the coalition and, in particular the US, kept struggling to reduce the domestic impact that their GHGs commitments would cause for the whole process. However, it did not go unnoticed that, in doing so, the Union was hampered by its own institutional clumsiness. As a result, it could not avoid conceding significant ground especially with regard to reduction targets and timetables.

To begin with, the original proposal of a 15% reduction target based on three GHGs was eventually discarded. As regards the EU, the final Protocol established an 8% collective reduction. Similarly, the US and Japan committed themselves to a 7%, and 6% respectively[426]. All reduction targets were based on six gases. As far as the EU target is concerned, it is worth noting that its objective was effectively much closer to the position initially taken by the Union in the framework of the Burden-Sharing agreement. Accordingly, "a rough estimate indicates that 8% reduction in relation to the six gases equates to about 12,5% in relation to the three gases"[427]. Furthermore, parties did not provide any support to the EU proposal for the establishment of an intermediate target to be reached by the year 2005. It was rather agreed that by the year 2005 Annex I parties must have demonstrated the progresses made with their reduction commitments.

Another compromise made by the EU concerns the issue of differentiation. Yet, initially the EU had proposed to apply a "flat rate" based on a percentage of 1990 GHGs emissions to all industrialized countries, while requesting a collective target for itself. Actually, the Union succeeded in securing the EU-bubble approach. Notwithstanding, it had to accept country-specific reduction targets as requested by Japan.

As for the range of market mechanisms constantly requested in particular by the US, during negotiations the Union had always expressed its skepticism in this regard, claiming that they could not substitute domestic actions by all means. In particular, the UK had always been culturally hostile towards the adoption of market-oriented mechanisms with respect to others. In discussing emissions trading, the EU delegation stated that unlimited trading could became rather risky, as they would prevent countries from adopting concrete reduction measures within their borders. As a result, the EU gained the inclusion of policies and measures according to "national circumstances". At the same

[425] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 15.
[426] Targets refer to the commitment period going from 2008 to 2012, compared to the emissions of 1990.
[427] Bjerregaard, R. (1998), as cited by Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, p. 458.

time, emissions trading and joint implementation were included in the Protocol as supplementary to domestic actions[428].

Against this backdrop, the EU Commissioner Ritt Bjerregaard manifested great disappointment in not reaching more ambitious commitments as initially set by the Union. Nonetheless, the Commission overall acknowledged the Protocol as an important step forward in the fight for the reduction of GHGs emissions[429]. Indeed, the antagonism between the EU and the US can be considered one of the most distinguishing features of the negotiation process. In this sense, it is worth noting the perception that the US delegation had about the EU approach. US representatives claimed that: "They were having more fun being green than in being practical. We had to convince everyone else"[430]. As illustrated, despite the EU attempted to play to the green gallery, it ended up conceding on almost all measures[431]. On the whole, the agreement was defined as "a trade-off between the EU preference for stringency and the US preference for flexibility"[432].

In this respect, academics observed that in the framework of the Kyoto Protocol, the key protagonists followed two different paradigms: some opted for a moral-based position, while others took an interest-based stance[433]. More to the point, countries pertaining to the Umbrella Group[434] built their line of action on their interests. Following a cost-benefit analysis, they explicitly negotiated on behalf of their interest. The main result was that they were labelled, especially by green NGOs, as opportunistic since they were merely acting out of self-interest. By contrast, the EU was convinced that a radical idealism, maybe reinforced by science, would be enough to achieve the desired outcomes. Indeed, this divergence of perspectives not only caused several deadlocks during the negotiating process, but it also prevented the parties from heightening the ambitiousness of the Protocol[435].

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[428] IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 15.
[429] Palinkas, P. (1998), "The climate change policy: the position of the European Union", *Energy & Environment*, Vol. 9, No. 4, p. 459.
[430] As cited in IISD (1997b). Report of the third conference of the parties to the United Nations Framework convention on climate change: 1-11 December 1997. Earth Negotiations Bulletin, p. 15.
[431] Boehmer-Christiansen, S., and Kellow, A., (2002*), International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, p. 76.
[432] As cited by Bodansky, D., Brunnée, J. and Rajamani, L. (2017), *International Climate Change Law*. Oxford, UK: Oxford University Press, p. 160.
[433] Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, pp 82-84.
[434] Among the most influential countries composing the Umbrella group stand out: Australia, Canada, Japan, the Russian Federation and the US. As regards UNFCCC party groupings' division see: https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/parties/party-groupings.
[435] Boehmer-Christiansen, S., and Kellow, A., (2002), *International Environmental Policy: Interests and the Failure of the Kyoto Process*. Northampton, MA: Edward Elgar Pub, pp 83-84.

4.4 The architecture of the Protocol: EU successes and failures.

The UNFCCC and its additional Protocol are mixed agreements, in the sense that both the Union and its member states are signatory parties sharing the same status. The EU is listed in Annex I of the Framework Convention, and participates to the international climate change regime as a "regional economic integration organization"[436]. Notably, the involvement of the EU in the Protocol is based on Council Decision 2002/358/EC "concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder"[437].

The following section provides a comprehensive analysis of the most relevant articles included in the Protocol, so as to evaluate in each of them the specific contribution given by the EU. Put it differently, this paragraph attempts to assess the Union's successes and failures in the Kyoto framework.

The Kyoto Protocol has been unanimously defined by academics as one of the most interesting and innovative multilateral agreements ever negotiated in the environmental field[438]. In order to strengthen the ambitiousness of the objectives initially set by the international community in the 1992 Framework Convention, the Protocol's design encloses a wide range of innovative approaches to foster the achievement of industrialized countries' commitments.

When analyzing the Kyoto agreement, some key features have to be highlighted immediately. To begin with, one of the most striking aspects of the Protocol refers the binding nature of its targets. Yet, unlike the Framework Convention, the Protocol includes emission ceilings as well as a timetable by which these ceilings have to be met by parties. On the whole, signatories committed to achieve a worldwide reduction of 5.2% in their GHG emissions compared to 1990 levels, within a first commitment period going from 2008 to 2012. Notably, quantified commitments refer to the emissions of six greenhouse gases which, taken together as a "basket", were acknowledged as the main responsible for environmental pollution.

For the first time since negotiations on climate change began, sovereign states that ratified the Kyoto agreement would be obliged to comply with all its provisions. In this context, it is worth underlying that the binding nature of the treaty has to be conceived in accordance with the so-called principle of "common but differentiated" responsibilities. The principle acknowledged the lower economic capacity of some parties, namely developing countries, putting much emphasis on richer

[436] As stated in Article 22 of the Framework Convention.
[437] Council Decision 2002/358/EC available at: https://eur-lex.europa.eu/homepage.html
[438] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, Issue 2, p. 281.

and higher emitting industrialized countries. Accordingly, at COP-3 parties eventually established that developing countries were not required to limit their GHGs emissions, thus respecting the intention expressed at the Berlin Conference. At the same time, it has to be pointed out that when the Protocol was signed, large differences in terms of per capita emissions among industrialized countries also existed. Notably, EU and Japan's emissions were about half the levels in the US and Australia[439].

Another feature of utmost importance introduced by the Protocol refers to the significant role assigned to the so-called flexible mechanisms, namely a complex of well devised instruments considered indispensable, especially by some parties, for succeeding in reducing GHG emissions in a cost-effective way. To be fair, the Protocol required parties to meet their targets primarily through the use of national measures, while flexible mechanisms were conceived as additional means.

One of the most interesting aspects of the market mechanisms is that they provide "geographical flexibility". Put it differently, these mechanisms gave Annex I Parties the possibility to achieve their commitments by investing and implementing projects in those countries where the marginal cost of the abatement would be lower than at the domestic level. Overall, it may be said that the distinguishing feature of the flexible mechanisms lies in the fact that although they were designed to combat climate change issues, they also attempted to reduce the impact and the costs of such actions.

Despite the far-reaching measures enclosed within the 28 articles of the Protocol, it is worth noting that when the agreement was finally reached, a large number of provisions lacked of detailed elaboration. Against this backdrop of uncertainty concerning the concrete interpretation and the implications of the agreed rules, it was not clear whether the Protocol would have been able to induce a substantial behavioral change. Not surprisingly, this aspect has been frequently highlighted and criticized by academics, who labelled the Kyoto agreement as an "unfinished business"[440].

Following a chronological order, the first provision worth of attention is Article 2 concerning Common and Coordinated policies and measures (informally referred to as PAMs). To be precise, the expression "policies and measures" is not defined neither in the Convention nor in the Protocol. Following the perspective of Yamin and Depledged[441], the term "policy" was employed to indicate a "prescriptive course of action", while the term "measures" to refer to the set of procedures needed in order to implement specific policies. In this context, Article 26 of the Vienna Convention on the Law

[439] Grubb, M. (2003) "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, p. 145.
[440] As cited by Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 95.
[441] Yamin, F., and Depledge, J., (2004), *The International Climate Change Regime: A guide to Rules, Institutions, and Procedures.* Cambridge: Cambridge University Press, p. 107.

of the Treaties needs to be taken into account, as it reads that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". In other words, one of the key rules of international law establishes that once an agreement is ratified, parties become responsible for enacting proper domestic policies, legislation as well as administrative measures in order to conform to their international obligations. As far as environmental treaties are concerned, it is up to each party to decide which policies and institutional arrangements to implement within its borders.

As for the Kyoto process itself, PAMs origins trace back to the Berlin Mandate. Indeed, since the issue emerged, the Union has always been one of its main proponents at the international level. In fact, alongside quantified targets, the EU's strategy also comprised the implementation of mandatory PAMs for all Annex I Parties. Scholars argued that two main aspects motivated EU leadership on PAMs: its internal politics, and most importantly, the US historical refusal to set targets and timetables[442].

As regards the internal driving force, further explanation is required. This explanatory factor has correlations with the combined carbon/energy tax proposed within the Union's borders in the first half of the 1990s. Smaller member states, which have always been dependent on foreign trade (such as the Netherlands), attempted to foster common and coordinated action at the European level by proposing a carbon/energy tax. As explained[443], the tax proposal was eventually abandoned due to the skepticism of the most powerful member states. Considering the incapacity to agree on concrete measures within the Union, the issue was therefore tabled at the international level, hoping to attract support from other counterparts such as Japan, and the US.

Accordingly, during the second meeting of the Ad Group on the Berlin Mandate, between October and November 1995, the EU had already tabled a proposal including three different types of PAMs. While the first category was planned to be mandatory for all, the second would have high priority, and the third one would depend on national circumstances. The active approach pursued by the Union towards the issue led some observers to conclude that the Union had conceived the Berlin Mandate as the framework to solve its internal problems[444].

According to Yamin[445], another plausible reason that may explain the EU's insistence on PAMs refers to the desire of the European Commission to extend its competence even further. In order to become more powerful, member states would have had to agree on the need for Community-wide measures to tackle climate change (as for instance the tax proposal), which among other things

[442] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 103.
[443] The dynamics related to the carbon tax proposal has been comprehensively addressed in chapter 2.
[444] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J. *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 53.
[445] *Ibidem*.

would have entailed international harmonization so as to prevent the Union from losing competitiveness.

Whatever the real explanation was, the course of events witnessed that the Union was not able to flesh out its proposal in detail until the end of the Berlin Mandate, therefore causing the hostility of the other parties and the irritation of Chairman Estrada. Overall, roughly 30 pages of PAMs proposals were submitted during the Berlin Mandate. Not surprisingly, the majority of them came from the Union, while the US even refused to elaborate them, as its delegation argued that decisions on whether adopting PAMs or not should have been left to each party.

On the whole, academics judged the approach adopted by the Union in the context of PAMs, rather disappointing, lacking of intellectual and entrepreneurial leadership[446]. Indeed, negotiations on PAMs did not strengthen European leadership at Kyoto. Notably, the final text of Article 2 witnesses the Union's failure regarding the binding nature of the provision. However, academics suggested that the list of measures listed in Article 1(a) may be potentially interpreted as the starting point for a renewed effort in the future[447].

Article 3 can be defined as the core of the Protocol. Yet, it refers to the quantified emission limitation and reduction commitments (QELRCs) of industrialized countries. Article 3.1. reads:

> *The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emissions limitation and reduction commitments inscribed in Annex B with a view to reducing their overall emissions of such gases by at least 5% below 1990 levels in the commitment period 2008 to 2012.*

As far as the article's content is concerned, it is worth reminding that prior to COP-2 commitments were not supposed to be binding. Notably, the US had always been rather skeptical in this regard, at least until COP-2. Yet, academics argued that EU's insistence for the inclusion of legally binding PAMs in the Protocol has to be attributed to the Union's fear that the US would never accept legally binding targets[448]. Conversely, the 1996 Geneva Declaration was a turning point in the run up to Kyoto as it marked the US change of stance on targets. The US maneuver completely wrong footed the Union. Yet, despite the EU had kept reiterating the importance of legally binding targets since the inception of climate change negotiations, by the time COP-2 took place it had not tabled any proposal

[446] *Ivi*, pp 52. Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 103.
[447] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, No. 2, p. 288.
[448] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J. *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 54.

yet. The breakthrough came in March 1997 when the Burden-Sharing agreement was reached under the Dutch Presidency. The agreement resulted in the EU proposal to cut industrialized countries' emissions by 15% within 2010, compared to 1990 emission levels.

As stated by Yamin, "the EU's position on targets represents the pinnacle of the EU leadership in the run up to Kyoto"[449]. Even though parties eventually agreed on lower targets, the Union's proposal was the most ambitious tabled in the Kyoto framework. Indeed, the ambitiousness of the Union led the US to move from its proposal of target stabilization by 2008-2012 announced by President Clinton in October 1997. Eventually, the EU committed to an 8% reduction, while Japan and the US agreed on a 6% and 7% respectively.

According to Oberthür and Ott[450], the numerical targets, especially those of Japan and the US, constitute the main EU achievement at Kyoto. Most probably, if the Union had not insisted on high numbers, the targets eventually adopted by COP-3 would have been much moderate. Moreover, as noted by Ugur et al.[451], the EU approach in pushing for higher international targets boosted its leadership credentials. Notably, academics[452] argued that in this context, the Union exerted directional leadership, taking the lead by setting high standards.

As for the other targets' related aspects, the Union did not succeed in implementing its proposals, like for instance the inclusion of an interim target. In this respect, a compromise was reached. Article 3.2 states that: "each party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol". Additional concessions were also made with regard the GHGs basket and sinks.

On the whole, it may be argued that Article 3 and its related implications mirror the Kyoto Protocol's design by striking a balance between the Union's strictness and the flexibility of the US[453]. Yet, as mentioned already, quantified targets were conceived alongside flexible mechanisms. Accordingly, Article 4 establishes the "joint fulfilment", which allows any group of parties to jointly fulfil their commitments under the Protocol. Article 6 defines the concept of "joint implementation" (JI) as regards the projects among industrialized countries. Similarly, also article 12 defines joint implementation, but with the involvement of a Clean Development Mechanism (CLM), which puts in place a multilateral framework for project-based implementation between industrialized and developing countries. Finally, article 17 establishes a scheme for Emissions Trading among

[449] As cited in *ivi*, p. 55.
[450] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 137.
[451] Ugur, O., Dogan, K.D., Aksoy, M., (2016). "European Union as a Leader in Climate Change Policy: Assessing Europe's Roles in the World", *European Scientific Journal*, Vol. 12, No. 5, p. 292.
[452] Parker & Karlsson (2010), Falkner (2007) as cited in *ibidem*.
[453] Bodansky, D., Brunnée, J. and Rajamani, L. (2017), *International Climate Change Law*. Oxford, UK: Oxford University Press, p. 171.

industrialized countries. Altogether, JI, CDM and Emissions Trading were denominated the "Kyoto mechanisms".

Notably, it has to be highlighted that when parties addressed the issue concerning international emissions trading, a high risk of stalemate emerged. While imposing a hard line on binding targets, both EU institutions and member states as well as environmental organizations were particularly suspicious with regard to emissions trading. Among other things, Europe had no experience with emissions trading as a policy instrument in environmental policy[454]. By contrast, the US kept reiterating its refusal to accept a binding emission target without flexibility. Against this backdrop, the UK proposed to amend the article by specifying that, in order to implement emissions trading, appropriate rules and guidelines would be needed. Both the EU and the US agreed on the UK proposal. As a result, Article 17 does not mandate emissions trading in any way. Rather, it states that parties "may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions […]".

It is not surprisingly that, since these issues and their implications were crucial for states' obligations under the protocol, some of them were unwilling to ratify the agreement until they had been resolved.

Strictly related to the targets' issue as well as to the flexibility provided by market mechanisms, the possibility to "bubble" enshrined in Article 4 marked with no doubt a great achievement for the Union. There is no doubt that the EU internal agreement sided by the flat-rate target proposal of -15% for all Annex I parties had been harshly criticized by other industrialized countries since it was tabled. In particular, the US blamed the EU of attempting to establish an unfair advantage with respect to other parties. Notwithstanding, the EU stuck to its position throughout the Kyoto process, eventually obtaining what it had requested.

By providing further authorization for and operational details on the joint fulfilment of emissions targets, Article 4 (in conjunction with article 3) gives to the Union the possibility to reallocate the target amongst its member states (15 at that time). As a result, by taking the 8% reduction target as point of reference, Germany and Denmark agreed to a 21% reduction, while the UK and the Netherlands agreed to a -12,5% and -6% respectively. Conversely, Portugal was allowed to increase its emissions by 27%, Spain by 15% and Greece by 25% over 1990 levels[455].

[454] In the post-Kyoto era, the EU succeeded in developing the first and largest international emissions trading system (ETS) in the world. In this context, academics highlighted the outstanding role of entrepreneurial leader played by the European Commission, which proved to be crucial for making the EU ETS. See Skjærseth, J.B. and Wettestad, J. (2010), "Making the EU Emissions Trading System: The European Commission as an entrepreneurial epistemic leader", *Global Environmental Change*, Vol. 20, No. 2, pp 314-321.
[455] See: https://ec.europa.eu/clima/policies/strategies/progress/kyoto_1_en

The internal distribution of the EU 'bubble'	
Country	**Internal commitment (% change from 1990 levels)**
Austria	–13.0
Belgium	–7.5
Denmark	–21.0
Finland	0
France	0
Germany	–21.0
Greece	+25.0
Ireland	+13.0
Italy	–6.5
Luxembourg	–28.0
Netherlands	–6.0
Portugal	+27.0
Spain	+15.0
Sweden	+4.0
United Kingdom	–12.5

Figure 4.2. Source: Grubb, M. (2003) "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, p. 152.

In this sense, the analysis carried out by Oberthür and Ott[456] is particularly relevant. Accordingly, the EU bubble would not be primarily conceived so as to tackle the cost-effectiveness side of the Protocol, but rather as a Commission's strategy to enable the Union to act as a whole, or at least to give this kind of perception to the other parties. By taking advantage from the EU Burden-Sharing agreement, the so-called cohesion countries[457], characterized by their low gross domestic products, would have been able to participate in the Protocol increasing, at the same time, their emission levels.

Apart from the right to jointly fulfil its commitments, the Union also succeeded in fending off the requests made by JUSSCANNZ to regulate the bubble's provision in view of a potential EU enlargement. Yet, Article 4(4) reads: "any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol". In other words, the geographical and temporal limits established ensured that the 8% reduction target of the EU would remain the same even after accession of new member states.

Despite this successful backdrop, it is worth stressing that the EU bubble proposal did not only benefit the Union, but unexpectedly, also the other industrialized countries. Yet, Article 4.2 extended the possibility to bubble to all parties, thus becoming a potential alternative to emissions

[456] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 141.
[457] Greece, Spain, Ireland, and Portugal.

trading. In this sense, academics argued that Article 4.2 was a direct consequence of the EU's internal struggles, which prevented the Union from having a straightforward position on the issue, therefore leaving to other parties some space for maneuver[458].

4.5 Reflections on the EU performance: did the Union succeed in exerting a leadership role in the Kyoto negotiations?

Throughout the history of climate change policy, the EU and its member states have attempted to develop, both at the domestic and international level, a wide range of innovative and far-reaching strategies so as to play a constructive role in multilateral negotiations and be recognized by the other international actors as the leader in the climate change regime. Among the host of reasons that may explain why the Union has aspired to take the lead in the climate change regime, academics drew their attention to three main aspects[459].

In the first place, scholars argued that climate policy was perceived by the Union (at least during the 1990s) as a considerable driver of European integration which, among the numerous advantages, it would lead to increase the influence of the European block on the international stage. In this respect, it has to be noted that during the 1990 decade, a number of countries pertaining to the former Eastern bloc were aspiring to enter the Union. When the Protocol was signed, the Union only comprised 15 members. However, on 1 May 2004, membership was extended to Central and Eastern European countries too. The process, which led to increase the number of member states from 15 to 25, became the widest Union's enlargement in the history[460]. In 2007, EU membership was also extended to Bulgaria and Romania. Finally, Croatia joined the Union in 2013[461]. Indeed, as noted by Selin and VanDeveer[462], EU membership proved to be fundamental to raise awareness on environmental and human standards within newer member states.

The second relevant explanation provided by academics with regard to European leadership aspirations is strictly related to its energy policy field. Yet, as illustrated in the previous chapters, the problem of climate change cannot be tackled by the EU without taking into account a number of other interrelated issues, such as transports, employment, other fiscal and economic aspects, and most

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[458] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 141.
[459] Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, pp 42-44.
[460] The 2004 involved: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
[461] See; https://europa.eu/european-union/about-eu/countries_en#tab-0-1.
[462] Selin, H. and VanDeveer, D.S. (2015) "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources*, Vol. 40, p. 323.

importantly, the energy sector[463]. Indeed, the Union has always been a massive importer of fossil fuels[464]. As a matter of facts, fostering a sustainable development of its energy sector as well as enhancing energy saving became one of the hardest challenges of the Union, especially after the oil price shocks of the 1970s and early 1980s. Notably, northern EU countries had already invested on the development of renewable energy and energy-efficient technology since the late 1970s, obtaining very good results. The innovative climate measures pioneered by northern European countries, including the use of alternative sources of energy, became soon part of a well-thought strategy to gradually increase EU energy efficiency. Against this backdrop, exerting leadership in the climate change regime would, among other things, enable the Union to supervise the energy supply issue, one of EU greatest weaknesses.

Ultimately, considering the large-scale nature of the climate change problem and, in this sense, the high international profile of the Kyoto agreement, Oberthür and Kelly[465] argued that the EU conceived the climate change issue as a potential mean to enhance its overall role as global actor. Put it differently, not only would the EU attempt to exert leadership in the climate change regime, but also in all other international issues. Probably, as noted by Oberthür[466], the Union's ambition might be attributed, among other things, to the Commission's willingness to counterbalance the US influence in all other issues of the international agenda.

On the basis of these argumentations as well as from the analysis carried out in the previous paragraph on the content of the Kyoto's provisions, it seems reasonable to conclude that the EU exerted a leadership role in one of the key aspects of the Protocol, namely in the common but differentiated obligations. Yet, first and foremost the Union succeeded in convincing the other industrialized countries to implement binding targets. In this sense, it is worth stressing that the Kyoto Protocol was the first binding agreement adopted by the international community in the field of climate change. Notably, by tabling a proposal extremely ambitious in terms of numbers, the Union pushed the more skeptical parties (JUSSCANNZ countries) to intensify their efforts, in terms of GHGs reductions, at Kyoto. Also, in regards to the European performance, it should not be forgotten that, contrary to the US, the Union also provided notable support to developing countries, which due to their poor economic capacities, had requested not to be involved in any sort of commitment. As

[463] O'Riordan and Jäger (1996) defined the climate change policy as a "wide net arena".
[464] Notably, in the 1990s, roughly only half of its energy demand managed to be satisfied by internal EU production. Following this trend, it was calculated that without the implementation of effective policy changes, energy domestic demand would rise to 55-70%.
[465] Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, pp 43-44.
[466] Oberthür, S. (2000) "The EU in international environmental regimes and the Energy Charter Treaty" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 104.

initially established by the Berlin Mandate though in great contrast with the US requests, developing countries were not taken into account for the first commitment period of the Protocol.

These are the main reasons that led Bäckstrand and Elgström to define the agreement reached in Kyoto as one of the most significant instances of EU leadership in the climate change field[467]. Notably, Van Schaik and Schunz even argued that during the Kyoto process "the EU was the most proactive and ambitious actor among industrialized countries"[468].

Nonetheless, as fairly observed by Oberthür and Kelly[469] it has to be underlined that EU efforts had a very limited impact in all other aspects of the Protocol. As shown, negotiations on PAMs, the possibility to bubble, and all the other innovative approaches contained in the agreement, were a great flop considering the ambitiousness demonstrated by the Union in the run up to Kyoto. Eventually, its weak attempts of directional leadership were definitely dampened by the influence of other powerful negotiators, especially the US. In this respect, when comparing the approaches adopted by the US and the EU respectively, Grubb et al. claimed that: "the coherence of the US administration contrasted with the unwieldy morass of EU decision making in the negotiation process"[470]. Strikingly, academics even argued that: "to discover the source of most of the ideas in the Protocol, one only needs to read the US proposal of January 1997"[471]. In other words, there is no doubt that, apart from few exceptions, the infrastructure of the Protocol has been deeply influenced by the US. Obviously, this statement refers to the market based flexible mechanisms such as joint implementation, emissions trading, and the Clean Development Mechanism, to which - being the most innovative part of the agreement - a significant part of the Protocol has been dedicated.

Some scholars argued that in order to reach an agreement based on flexibility, the US employed "an elegant combination of instrumental and power-based means"[472], which is a mix of political skills, strength and imagination. Such a perspective would potentially lead to consider the US as a leader in this framework. Notwithstanding, academics do not unanimously agree on this view. While some defined the US performance as creative leadership, others acknowledged that the US

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[467] Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 1376.
[468] Van Schaik and Schunz (2012), as cited by *ibidem*.
[469] Oberthür, S. and Kelly, C.R., (2008), "EU leadership in International Climate Policy: Achievements and Challenge", *The International Spectator*, Vol. 43, No. 3, p. 36.
[470] Grubb et al. (1999), as cited by Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 48.
[471] Grubb et al. (1999), as cited by Grubb, M. (2003) "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, p. 184.
[472] (Tangen, 1999) as cited by Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 48. According to the Tangen, in the Kyoto Process the US combined some key structural leadership factors (political strength) with the main feature of instrumental leadership (political skills).

resorted to a wide range of smart ways in order to safeguard its national interests[473]. In contrast with this, some scholars believe that the contribution of the EU was crucial to raise "moral standards" as well as to draw attention on the importance that the climate change problem represents nowadays for the whole of the international community[474].

Strikingly, against this backdrop of interdependence between the EU and the US, Andresen and Agrawala[475] argued that talking about nations' leadership may be inaccurate. Accordingly, when there is great disagreement about the goal of the negotiating process and, most of all, on the proper means to achieve it, the concept of leadership becomes particularly difficult to be applied. Rather, the authors argued that as far as COP-3 is concerned, it would be more appropriate to talk about individual leadership, that is leadership exerted by the individual covering an institutional position. In this sense, the authors refer to the performance of Chairman Estrada as well as to the key role played by Vice President Al Gore in getting the US climate policy more in line with the rest of the other OECD countries. Instead, when considering states' performances, the authors suggest adopting a wider perspective, in the sense that states' roles are dynamic and interchangeable. Put it differently, a state may be a "pusher" in a given phase of the negotiating process, while being a "laggard" in the next phase[476]. It is worth pointing out that the concepts of "pusher" and "leader" as employed in Andresen and Agrawala's analysis are not synonym. For instance, even though the Union has demonstrated to be a pusher by articulating a fairly high profile position during the negotiating process, in the final stage (at COP-3), its leadership performance did not live up to the expectations. It may be argued that the EU served as a directional leader, since it pushed for the adoption of ambitious targets; notwithstanding, its leadership attempts were undermined, among other things, by the few concrete domestic sacrifices done within its borders. By contrast the US, which has been perceived as a "laggard" for long time in terms of its negotiating positions, eventually succeeded in shaping the institutional structure of the Protocol to its own advantage.

In view of the above, scholars demonstrated to have conflicting opinions about the type and the degree of leadership exerted by states in the Kyoto framework. For this reason, some academics have preferred to look at the Protocol as an overall "compromise"[477] between the EU and the US. Leaving aside academics' opinions, it is also important to remind that leadership does not only emerge when a set of theoretical criteria - that can be objectively observed - are satisfied. As also affirmed

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[473] *Ibidem*.
[474] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, No. 2, p. 289.
[475] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, pp 48-49.
[476] *Ibidem*.
[477] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol. 1, No. 2, p. 288.

by legal scholars, when one actor aspires to become a leader, it needs to be recognized by others as such. In this sense, the relationship between leaders and followers[478] is crucial, and suggests that there can be no leaders without followers. Indeed, along the decades, scholars have tended to focus their attention mainly towards the supply side of global climate change leadership, while almost ignoring the demand aspect[479]. In this sense, academics carried out comprehensive analysis over potential climate change leaders, though very few contributions about the followers and their views on leadership were provided. Instead, when evaluating leadership in a given issue area, it would be appropriate taking into account both sides of the coin, namely leaders as well as followers' perceptions.

On the whole, Karlsson et al.[480] argued that leadership perceptions vary according to three main factors. The geographical belonging stands out as one of the most significant aspects. Notably, the analysis carried out by Gupta and Van der Grijp[481] showed that the leadership role played by the EU in the framework of Kyoto, was perceived by European countries as indisputable. Conversely, non-EU states had a more mixed impression with regard to the Union's performance. In addition to the geographical belonging, Karlsson et al. pointed out that leadership perceptions may even vary among individuals pertaining to the same group, according to the specific position hold. In this sense, the degree of knowledge possessed is of utmost importance as it helps shaping individuals' opinions. This means that less informed actors (as for instance national parliamentarians) are more inclined to look for guidance and leadership, with respect to other groups of actors (say chief negotiators) that are better informed on the issue. Thirdly, and most importantly, Karlsson et al. found out that leadership perceptions vary according to the specific issue at stake.

In this sense, the analysis conducted by Gupta and Van der Grijp[482] deserves a special mention, as it focused on how negotiators, industrialists, and environmentalists (from within the EU and outside) perceived the Union's role in the Kyoto negotiations. The analysis was developed by taking into account the results of 67 interviews, conducted in 1997-1998 among the aforementioned categories. On the whole, respondents unanimously agreed on the fact that not only is leadership a crucial determinant to develop initiatives and prevent stagnation, but most importantly, to push the climate regime further. Strictly related to this, it is worth reminding that due to their lower capacities, developing countries did not take any commitment at Kyoto. Therefore, it is possible to consider them

[478] The concept comes from Underdal (1994), who defined leadership as "a relationship between leaders and followers".
[479] Karlsson, C., Charles, P., Hjerpe, M. and Björn-Ola, L., (2011), "Looking for leaders: Perceptions of climate change leadership among climate change negotiation participants." *Global Environmental Politics,* Vol. 11, No. 1, p. 89.
[480] *Ivi* pp 90-91.
[481] Gupta, J. and Van der Grijp, N. (2000), "Climate Change, leadership and the EU" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, pp 67-80.
[482] *Ibidem.*

as followers, and it is for this reason that their leadership perceptions are of utmost importance.

The overall outcome emerged from the interviews conducted within developing countries was that no clear-cut leader seemed to have emerged in the Kyoto framework. Rather, there seemed to be general agreement on the fact that actors performed various leadership roles depending on the issue at stake.

Non-EU interviewees argued that the first leader to emerge was The Alliance of Small Island States (AOSIS), which initially led the negotiations by tabling a Protocol proposal. As negotiations began to develop, the EU was then recognized as the "forerunner" and the "trailblazer"[483] with regard to the targets issue. Notwithstanding, despite both AOSIS and the EU exerted their leadership in terms of agenda-setting, remarkable differences between their respective approaches have been highlighted by interviewees. Yet, when the Protocol proposal was submitted, countries pertaining to AOSIS had already demonstrated to be highly vulnerable to climate impacts, apart from the fact that their overall GHGs emission levels were rather low. Against this backdrop, AOSIS requests in the framework of the Berlin Mandate appeared legitimate to negotiators, who demonstrated their eagerness to consider the Protocol proposal. By contrary, the EU performance was heavily criticized. Notably, developing countries described it as rhetorical, with neither substance nor execution. Reportedly, it seemed like the Union wanted to exert leadership but could not find the suitable means to achieve its goal.

Developing countries' perceptions on the US performance is worth of attention too, as it seems to give further confirmation on the fact that its approach during the Kyoto process appeared perfectly in contrast with the one adopted by the Union. Notably, developing countries defined the US as a "natural leader", mainly due to its structural power. However, unlike the Union, which strove for imposing its leadership throughout the whole process, the US appeared not willing to take the lead in the fight against climate change. Rather, the country employed its power mainly to safeguard US interests as well as its economic competitiveness.

Perception of who has been the leader within the regime.

The leader is:	AOSIS	EU	USA and large DCs
Why:	Pure position, norm and agenda setting: the clean conscience	Agenda/norm setting and bargaining: the guilty conscience	Weight, and potential for actual action: the reality check
Leadership is..	Charismatic and instrumental	Instrumental, (structural and directional)	Structural (and instrumental)

[483] As cited in *ibidem*.

Figure 4.3. Source: Gupta, J. and Van der Grijp, N. (2000), "Climate Change, leadership and the EU" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands, Kluwer Academic Publishers, , pp 70.

On the whole, the data provided by Gupta and Van der Grijp are fundamental for this study. Not only have they contributed to deepen this investigation by taking into account the supply side of leadership, but they also proved to be in line with the contributions of the main experts cited so far[484]. Against this backdrop, it is essential to stress that leadership is a broad concept.

As far as the international relations' field is concerned, in order to assess a leadership performance, it is first and foremost necessary to make a distinction among the different types of leadership existing. By the same token, given the magnitude of the climate change problem, it is worth taking into account that states' roles are dynamic, and so is leadership.

Put it differently, leadership in the Kyoto process has not been exerted by one single actor. For this reason, in order to analyze the EU leadership performance in a comprehensive way, it is indispensable to narrow the focus of the analysis, so as to assess all the stages of the negotiating process. Only by examining the various phases of the Berlin Mandate process, it is possible to evaluate the contribution given by the Union in the Kyoto Protocol.

[484] See for instance Andresen, S and Agrawala, S., (2002), Bäckstrand, K. and Elgström, O. (2013), Gupta, J. and Riungius, L. (2001), Oberthür, S. and Ott, H.E. (1999), Oberthür, S. (2000), Yamin, F. (2000).

Conclusions

COP-3 represents the culmination of more than two years of negotiations, which started in April 1995 under the Berlin Mandate. The Protocol adopted in Kyoto after the final ten-days round is the product of the coordinated efforts of the whole of the international community to establish concrete commitments for the reduction of GHGs levels in the atmosphere. In this sense, it is worth reminding that the KP is the first international agreement to adopt binding commitments for all industrialized countries pertaining to the UNFCCC, with the exception of developing countries. Its origins lay in the 1992 Convention, which is the reason why it has to be conceived as an additional Protocol.

Against this backdrop, this thesis has attempted to evaluate whether the European Union succeeded in playing a leadership role in the Kyoto process. In a nutshell, experts agreed on considering the Union as one of the key players of the negotiation process that led to the adoption of the Protocol. However, scholars hold conflicting positions about the type and the degree of leadership exerted in this framework. Notably, while some of them defined the EU as "the most proactive and ambitious actor among industrialized countries"[485], others claimed that the Union performance ended up being seriously affected by other states' influence, especially the US[486].

Following Gupta and Van der Grijp's line of reasoning (who argued that leadership can be exerted "in terms of agenda setting, norm setting, and actual implementation"[487]), and that of Andresen and Agrawala's[488] (who claimed that states' leadership performance can evolve during the negotiation process), this thesis brought evidence of the fact that the EU performance during the Kyoto process has been variable and sometimes contradictory.

As frequently stressed throughout this investigation, being leadership a broad and sometimes quite vague concept, this thesis has deliberately resorted to a great variety of academics' perspectives so as to deepen the scope of the entire analysis, and draw the following conclusions.

To begin with, research conducted in the first chapter demonstrated that EU leadership in the climate regime lays its basis in a long and deep-rooted tradition of environmental concern, which dates back to the first half of the 1970s. Despite the EU emerged in the aftermath of the Second World

[485] Van Schaik and Schunz (2012), as cited by Bäckstrand, K. and Elgström, O. (2013), "The EU's role in climate change negotiations: from leader to 'leadiator'", *Journal of European Public Policy*, Vol. 20, No. 10, p. 1376.
[486] Grubb et al. (1999), as cited by Grubb, M. (2003) "The Economics of the Kyoto Protocol", *World Economics*, Vol. 4, No. 3, p. 184.
[487] As cited in Gupta, J. and Van der Grijp, N. (2002), "Perceptions of the EU's role", in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 3. See also Gupta and Van der Grjp (2000), p. 68.
[488] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 49.

War as an economic organization, its competences expanded to other policy areas such as borders and security, migration, transport, energy, environment, climate change and so forth. Indeed, the environmental field has always represented one of the most challenging chapters of the EU[489]. In this respect, it is worth highlighting that although the original treaty establishing the EEC did not contain any specific reference to environmental protection, the former Community demonstrated its active involvement in the environmental field since the first UN conference on the environment took place in Stockholm in 1972[490]. In the wake of the Stockholm conference, the Community adopted its first Environmental Action Programme (EAP), which set in motion a constant process of EU environmental policy expansion and consolidation.[491] Most importantly, 1987 was a real turning point in EC environmental policy, as the Single European Act (SEA) introduced an explicit legal basis for environmental legislation at the European level.

At the same time, the first chapter also demonstrated that the expansion of EU environmental policy went hand in hand with the transformation and consolidation of the organization itself[492]. Notably, among the key treaties of the Union, the 1992 Treaty on the European Union (TEU) represents one of the most important agreements in the organization's history. Not only did it create the EU as a political identity, but it also introduced for the first time a specific reference to environmental protection among the objectives of the Union, calling among other things, for serious cooperation on environmental issues[493].

Indeed, experts unanimously agreed on considering the 1990 decade a period of utmost importance, not only because of the further consolidation of the environmental policy at both the European and international level, but also because of the impressive development of the climate change policy, as a separate field[494].

Right after the adoption of the United Nations Framework Convention on Climate Change in 1992, the EU started to intensify its efforts in order to elaborate a proper line of action that could deal with the climate change challenge. In doing so, there is no doubt that the Union distinguished itself as a prominent actor in the climate change regime. However, EU's ambitions proved to be much

[489] Massai, L. (2011), *The Kyoto Protocol in the EU: European Community and Member States under International and European law*. The Hague: TMC Asser Press, Springer, pp 22-23.
[490] Selin, H. and VanDeveer, D.S. (2015) "Broader, Deeper and Greener: European Union Environmental Politics, Policies and Outcomes", *Annual Review of Environment and Resources*, Vol. 40, p. 312.
[491] Orlando E (2014) "The Evolution of EU Policy and Law in the Environmental Field: Achievements and Current Challenges", in Bakker C, Francioni F (eds), *The EU, The US and Global Climate Governance*. London and New York: Routledge, p. 1.
[492] *Ivi*, p. 2.
[493] As enshrined in Article 3 TEU.
[494] The first IPCC Assessment Report was released in 1990. It brought scientific evidence on the damaging consequences deriving from climate change, and underlined the importance of intergovernmental cooperation.

higher in this field, for it also attempted to become a leader in the fight against climate change[495].

As noted by Schreurs and Tiberghien[496] during the first half of the 1990s, the EU played an important agenda setter role. Notably, by developing and promoting new policy ideas and blue prints of agreements, the Commission and its Directorate placed the Union at the forefront of international efforts against the climate change issue. While at the national level, several European countries had announced voluntary emission reduction targets, the Union attempted to design a climate change package to promote renewable energy and establish a monitoring mechanism for European GHGs. Unfortunately, the divergence of views between the Commission and the Council with regard to the initiatives included in the package deadlocked the development of the European climate policy. Moreover, as noted by Yamin,[497] the discrepancy emerged between the Community's political goals and their effective implementation affected EU leadership at the international level. In this context, Andresen and Agrawala[498] claimed that at least during the first half of the 1990s, the Union failed to exert a role of entrepreneurial leader[499]. Instead, given the ambitious goals set by some EU member states such as Germany, the Netherlands, and Denmark, the authors acknowledged some scattered evidence of directional leadership[500]. Since the Union struggled to implement innovative measures within its borders unsuccessfully, Andresen and Agrawala preferred to define it as a pusher rather than a leader. In addition to this, it is worth reminding that the EU has been fiercely criticized by other UNFCCC parties, especially developing countries, which defined the EU line of action as rhetorical, with neither substance nor execution.

In this respect, the analysis provided in the second chapter has been fundamental, as it served to lay the basis of EU political leadership. Research has confirmed that "the EU can be considered a *sui generis* international climate actor"[501], which is indeed an essential precondition for exerting political leadership at the international level. Notably, academics pointed out that a successful leadership performance in multilateral negotiations requires specific conditions. Due to the wide range of experts' contributions taken into account in the second chapter of this thesis, it has been

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[495] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 45.
[496] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics*, Vol. 7, No. 4, p. 20.
[497] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?*, Vol. 27. The Netherlands: Kluwer Academic Publishers, pp 49-50.
[498] Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 46.
[499] As highlighted by Kingdon (1984), policy entrepreneurs play a crucial role in the agenda-setting phase as well as in that of alternatives' specification.
[500] *Ibidem.*
[501] As cited by Pavese, C.B. and Torney, D. (2012), "The contribution of the European Union to global climate change governance: explaining the conditions for EU actorness", *Rev. Bras. Polít. Int.*, No. 55, p. 125.

possible to conclude that as far as the EU leadership in the climate change regime is concerned, cohesion (speaking with one voice) and credibility are factors of utmost importance for a successful performance[502]. Indeed, as highlighted several times in this thesis, during the negotiation process leading to the adoption of the Kyoto Protocol, both the aforementioned factors (EU cohesion and credibility) have been seriously jeopardized by the numerous contrasts taking place at the European level between member states and EU institutional actors. Complexities mainly derived from the fact that climate change is an area of shared competence, thus obliging the Union to agree on a common position supported by all member states.

In this sense, the comprehensive analysis conducted in the third and fourth chapters of this thesis have demonstrated that the shared competence dynamic in the field of climate change turned into the EU's Achilles heel. As frequently highlighted, the continuous contrasts taking place at the EU level seriously hampered the Union's attempts to implement effective and far-reaching climate mitigation measures within its borders[503]. The combined carbon/energy tax contained in the climate package is the perfect example. Accordingly, the EU incapacity to reach a compromise on its climate strategy also reflected at the international level throughout the Berlin process and in occasion of the 1997 Kyoto Conference. In most cases, the EU demonstrated its incapacity to speak with a single voice, and to stand out as a unified actor or a cohesive coalition As a matter of facts, its credibility with respect to the other international actors has been heavily affected, and with it the leadership ambitions of the EU.

As suggested by Grubb and Gupta[504] EU climate change leadership should be evaluated along three dimensions: instrumental, entrepreneurial, and directional. According to the authors, the structural dimension is crucial to understand why during the Kyoto process the political attention focused mainly on the competing visions of the US and the EU.[505] However, - apart from the already mentioned internal and external EU constraints - the authors also acknowledged that given the global and long-term nature of the climate change problem, "sticks and carrots" leadership is unlikely to offer sustainable solution. In any case, the structural power of both the EU and the US placed with no doubt the two blocks in a dominant position with respect to the other UNFCCC parties.

While during the first half of the 1990s, the EU only wielded a pusher role, it definitely succeeded in exerting political entrepreneurial leadership in occasion of the Burden-Sharing

[502] See for instance Oberthür and Kelly (2008), Pavese and Torney (2012), Brandi (2018).
[503] See for instance Tömmel and Verdun (2017), Fernandez M, R.M. (2012), Oberthür and Kelly (2008).
[504] Grubb, M. and Gupta, J., (2000), "Leadership: Theory and methodology" in *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, pp 18-24.
[505] *Ivi*, p. 19.

Agreement adoption[506]. In March 1997, the Environmental Council managed to set a GHGs reduction target of 10% for the Union, and an overall 15% GHGs reduction target for the whole of the international community to be achieved within 2010. Indeed, on this occasion the Environmental Council, the Commission and member states managed to combine their efforts in order to strengthen the European influence in the global climate negotiations. By using Schreurs and Tiberghien's words[507], it can be argued that the EU performance was the result of a "process of mutual leadership reinforcement by different actors involved in the EU's process of multi-level governance".

As noted by Yamin[508], the ambitiousness of the EU agreement proved to be fundamental as it set such a challenging target that forced the other parties (especially the US) to increase their efforts in the fight against climate change. Probably, without the European engagement, the targets contained in the Kyoto Protocol would have been much lower. In light of these considerations, the Burden-Sharing Agreement has been considered by academics as the "pinnacle of EU leadership"[509] in the process leading to the adoption of the Protocol. Notably, the Dutch performance was indeed of utmost importance as it gave an evident contribution for strengthening the European leadership. Overall, on this occasion the EU was both an entrepreneurial and a directional leader, as one the one hand it succeeded in setting the highest CO_2 target for itself, and on the other hand it pushed for higher international targets so as to tackle ambitiously the climate change issue at the global level[510].

Despite on the eve of COP-3 the Union had gained momentum with the BSA, the EU "bunker mentality"[511] proved to be fatal in the final negotiation stage. Yet, in more than one occasion, at COP-3 the EU group was caught while discussing about issues that had already been agreed during the formal negotiation. Notably, as regards the negotiation of PAMs, one of the greatest EU's concerns, Yamin[512] argued that the Union lacked of intellectual and entrepreneurial leadership. Indeed, during the Berlin process and at Kyoto, problems of disunity as well as complications in the EU decisional process prevented the Union from reaching the ambitious achievements it had set in the beginning.

On the whole, experts acknowledged that the EU was a successful international leader in the

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[506] Kanie, N. (2003), "Domestic capacity, regional institution and global negotiations: lessons from the Netherlands-EU Kyoto Protocol negotiation", in Faure, M., Gupta, J. and Nentjes, A., *Climate Change and the Kyoto Protocol: The Role of Institutions and Instruments to Control Global Change*. Cheltenham, UK: Edward Elgar Publishing, pp 230-247.

[507] Schreurs, M.A. and Tiberghien, Y., (2007), "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation", *Global Environmental Politics,* Vol. 7, No. 4, p. 40.

[508] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 55.

[509] *Ibidem.*

[510] Ugur, O., Dogan, K.D., Aksoy, M., (2016). "European Union as a Leader in Climate Change Policy: Assessing Europe's Roles in the World", *European Scientific Journal*, Vol. 12, No. 5, p. 292.

[511] Oberthür, S. and Ott, H.E. (1999), *The Kyoto Protocol: International Climate Policy for the 21st Century*. Berlin: Springer-Verlag, p. 87.

[512] Yamin, F. (2000), "The role of the EU in climate negotiations" in Grubb, M. and Gupta, J., *Climate Change and European Leadership: A sustainable role for Europe?,* Vol. 27. The Netherlands: Kluwer Academic Publishers, p. 52.

Kyoto process, mainly because of the ambitious binding targets it managed to impose to the other UNFCCC parties[513]. Notably, according to Ugur, the KP "owes its existence to the EU more than to any state"[514]. However, it cannot be denied that as regards the PAM's issue as well as flexible market mechanisms and other key aspects of the Protocol, the EU performance remained below expectations. In this respect, there are no doubts that the US and JUSSCANNZ countries succeeded in obtaining what they had requested. This is the reason why it would be more appropriate to look at the KP as a compromise, where "the EU got their numbers, the US got their institutions, Japan got prestige as a host, the JUSSCANNZ countries got their differentiation and the developing countries avoided commitments"[515].

[513] Gupta, J. and Ringius, L. (2001), "The EU's Climate Leadership: Reconciling Ambition and Reality", *International Environmental Agreements: Politics, Law and Economics*, Vol.1, Issue 2, p. 294.
[514] As cited by Ugur, O., Dogan, K.D., Aksoy, M., (2016). "European Union as a Leader in Climate Change Policy: Assessing Europe's Roles in the World", *European Scientific Journal*, Vol. 12, No. 5, p. 291.
[515] (Andresen, 1998) as cited by Andresen, S and Agrawala, S., (2002), "Leaders, pushers and laggards in the making of climate regime", *Global Environmental Change*, Vol. 12, No. 1, p. 47.

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