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**Panel: Environmental Policy Learning in Europe: Empirical Puzzles and
Conceptual Advances**

**Paper: From the Local to the Global:
Learning about Human Rights Effects of Climate Policies**

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1. Introduction

Every year, member states of the United Nations Framework Convention on Climate Change (UNFCCC) negotiate at the Conference of the Parties (COP) to review the convention's implementation, to adopt legal instruments or to make additional institutional arrangements. During the negotiation process, governments organize themselves in blocs and coalitions in order to combine strengths, increase their influence and push forward their common agendas.¹ Civil society organizations (CSOs) can participate in UNFCCC negotiations as accredited observers representing the interests of particular societal groups. To be able to make oral interventions at the negotiations, CSOs need to be recognized as an official constituency by the UNFCCC's Secretariat. Whereas the UNFCCC has initially been characterized by strong engagement of business stakeholders and environmental organizations, other actors have now entered the scene, among them indigenous peoples, faith-based groups, gender advocates and human rights activists often organized in transnational advocacy networks (TANs).

TANs can be understood as communicative structures in which a range of activists guided by principled ideas and values interact. These ideas, values and norms are central to the networks' activities and they determine criteria for evaluating whether particular actions and their outcomes are just or unjust. TANs create new linkages, multiply access channels to the international system, make resources available to new actors and help to transform practices of national sovereignty. Within these networks, international and local CSOs, foundations, the media, churches, trade unions, academics and even members of regional or international state organizations as well as single representatives of a state government can collaborate. TAN's overall objective is to change the policies of states and international organizations (IOs).²

Strong civil society and TAN participation can make state negotiations more complex and difficult – tabling new themes and issues, such as the adverse human rights impacts of climate change and climate politics. Human rights concerns, in particular, give negotiations a more intricate character; they cannot be easily ignored and usually require immediate political action.³ Concerns voiced in relation to human rights at the climate conferences usually take

¹ H. Bulkeley and P. Newell, *Governing Climate Change* (2010) at 18.

² M. Keck and K. Sikkink, *Activists Beyond Borders* (1998) at 9.

³ R.P. Hiskes, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice* (2009).

two directions. On the one hand, climate change impacts hamper the full realization of economic, social and cultural rights, such as the right to health, water, food and adequate housing. In certain cases, like extreme weather events, the right to life can also be affected. On the other hand, climate policy implementation can also infringe on human rights. Large scale mitigation projects like hydroelectric dams, for instance, have previously lead to limited access to land, water or cultural sites for local populations.⁴ Therefore, civil society actors lobby for governmental commitment to human rights in climate agreements. States, however, have for a considerable period of time refrained from applying a human rights language in climate negotiation processes. Developed states – that are usually financing climate policies – feared even more costly obligations, if an observance of certain standards is required. Developing countries emphasized their sovereignty and were afraid that deficiencies in the rights situation on their own territory could become unveiled.⁵

Nevertheless, human rights entered the preambulatory and operative clauses of the climate agreements made at COP 16 in Cancun, Mexico in 2010 and have again been institutionalized⁶ in the preamble of the 2015 Paris Agreement at COP 21 in France. Moreover, in 2010, procedural human rights have been installed as a requirement for forest protection and management programs called *Reducing Emissions from Deforestation and Forest Degradation* (REDD+). Their introduction for projects under the *Clean Development Mechanism* (CDM) has been debated at COP 19 in Warsaw in 2013 and at the following negotiations with a view to revising the modalities and procedures of the CDM. Procedural human rights are of particular importance in environmental law. They establish a link between the state and civil society by fostering transparency and participation in environmental decision-making.⁷ The most important procedural rights are the right to information, the right to participation in decision-making and the right to justice, the latter usually meaning access

⁴ Schapper and Lederer, 'Climate Change and Human Rights: Mapping Institutional Inter-linkages', 27 *Cambridge Review of International Affairs* (2014) 4, at 666-679.

⁵ Wallbott and Schapper, 'Negotiating By Own Standards? The Use and Validity of Human Rights Norms in UN Climate Negotiations', *International Environmental Agreements: Politics, Law and Economics*, DOI 10.1007/s10784-015-9315-4 (online first).

⁶ In this paper, I understand institutionalization as the adoption of human rights norms. States can formally adopt norms due to strategic reasons without necessarily being convinced that this is an appropriate norm. The literature I refer to makes a conceptual differentiation between prescriptive status (institutionalization) and norm-consistent behavior (internalization). Thus, institutionalization has to be differentiated from behaving according to the norm. T. Risse, S.C. Ropp and K. Sikkink (eds.), *The Power of Human Rights. International Norms and Domestic Change* (1999).

⁷ Gupta, 'Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance', 8 *Global Environmental Politics* (2008) 2, at 1-7.

to judicial and administrative recourse procedures. But how can this interaction between the human rights and the climate regime be explained?

In this paper, I argue that the typology of tactics of TANs established by Keck and Sikkink (1998) helps to understand why and how cognitive interaction takes place between the human rights and the climate regime. TANs use information politics, symbolic politics, moral leverage and accountability politics to foster learning processes among climate negotiators. They use local experiences and case studies at the international climate negotiations to demonstrate that both climate change and climate policies have adverse human rights effects at the grassroots level.⁸ Simultaneously, they emphasize the need for observing existing rights obligations in all climate-related actions and for strengthening procedural rights in climate policies to protect the local societal groups, especially indigenous peoples.

By interacting very closely with state representatives, international non-state partners within TANs transmit local claims to the states' negotiation table. They persuade state actors that are receptive to human rights arguments to introduce rights language into the draft texts being negotiated.

To elaborate my argument, I have structured my paper in the following way. First, I briefly review the literature on civil society participation and the activities of TANs at the international climate conferences. Second, I will present a case study on the activities and influence of the Human Rights and Climate Change Working Group (HRCCWG). I selected the HRCCWG because it constitutes the only TAN active at the COPs that is exclusively focusing on institutionalizing human rights in the climate regime and that was established for exactly that reason. The HRCCWG was the initiator and coordinator of a broader inter-constituency alliance at COP 21 promoting human rights in the Paris Agreement. My empirical assessment builds on a content analysis of primary documents, including observer submissions, press releases, social media, as well as reports from IOs and CSOs. Additionally, I draw on semi-structured interviews conducted with activists of the HRCCWG at the international climate negotiations in Warsaw in 2013 and in Paris in 2015 (and after Paris via skype in 2016). Third, I will reflect on the relevance of policy learning and cognitive interaction as the main mechanisms initiating institutional interlinkages between the human rights and the climate regime, before I conclude.

⁸ Schapper and Lederer, *supra* note 5.

2. Transnational Human Rights Advocacy at the International Climate Conferences

In 1992, the Rio Conference on Environment and Development has marked, among other substantive themes, the strengthening of civil society participation in decision-making processes within the UN system.⁹ Civil society participants are understood to bring expertise and credibility to IOs and negotiations within their fora.¹⁰ In open and transparent negotiation processes, states increasingly take up non-state demands.¹¹ CSO participation is considered to improve the democratic development of IOs and their decisions.¹² Environmental and climate politics can be regarded as unique policy fields facilitating advanced institutional mechanisms for access and participation of civil society actors.¹³

In climate politics, the focus of CSOs in negotiations is on addressing justice concerns or employing a climate justice frame.¹⁴ Climate justice is a fluid framework that is diversely utilized,¹⁵ but it broadly embraces the observation that those people who have contributed the least to climate change are those who are affected the most¹⁶ – and often have the fewest

⁹ Dany, 'Ambivalenzen der Partizipation. Grenzen des NGO Einflusses auf dem Weltgipfel zur Informationsgesellschaft', 19 *Zeitschrift für Internationale Beziehungen* (2012) 2, at 73.

¹⁰ T. Brühl, *Nichtregierungsorganisationen als Akteure internationaler Umweltverhandlungen. Ein Erklärungsmodell auf der Basis der situationsspezifischen Ressourcennachfrage* (2003), at 186.

¹¹ Steffek and Nanz, 'Emergent Patterns of Civil Society Participation in Global and European Governance', in J. Steffek, C. Kissling and P. Nanz (eds.), *Civil Society Participation in European and Global Governance* (2008) 1, at 29.

¹² Squatrito, 'Opening the Doors to the WTO Dispute Settlement: State Preferences on NGO Access as Amici', 18 *Swiss Political Science Review* (2012) 2, at 1-24; Scholte, 'A More Inclusive Global Governance? The IMF and Civil Society in Africa', 18 *Global Governance* (2012) 2, at 185-206; Take, 'Legitimacy in Global Governance: International, Transnational and Private Institutions Compared', 18 *Swiss Political Science Review* (2012) 2, at 220-248; Bexell, Tallberg and Uhlin, 'Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors', 16 *Global Governance* (2010) 1, at 81-101.

¹³ Bernstein, 'Legitimacy Problems and Responses in Global Environmental Governance', in P. Dauvergne (ed.), *Handbook of Global Environmental Politics* (2012) 147, at 162; Bäckstrand, 'Democracy and Global Environmental Politics', in P. Dauvergne (ed.), *Handbook of Global Environmental Politics* (2012) 507, at 519.

¹⁴ della Porta and Parks, 'Framing-Prozesse in der Klimabewegung: Von Klimawandel zu Klimagerechtigkeit', in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 39, at 56; Görg and Bedall, 'Antagonistische Positionen: Die Climate-Justice-Koalition vor dem Hintergrund der Theorie gesellschaftlicher Naturverhältnisse', in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 75, at 105; Dietz, 'Ergebnisse des Handbuchs: Verfassung, Einfluss und Zukunft der Klimabewegung', in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 469, at 484.

¹⁵ De Lucia, 'Die Klimagerechtigkeitsbewegung und der hegemoniale Diskurs über Technologie', in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 107, at 133.

¹⁶ Görg and Bedall, 'Antagonistische Positionen: Die Climate-Justice-Koalition vor dem Hintergrund der Theorie gesellschaftlicher Naturverhältnisse', in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 75, at 88-89.

resources to adapt¹⁷. The climate justice movement is characterized by antagonism between a moderate wing accepting capitalism and lobbying for change within established institutions and a radical wing viewing capitalism as a root cause for climate challenges that needs to be questioned.¹⁸ This results in cooperation and conflict between TANs and states within and outside of the UNFCCC process.¹⁹

Moderate wing CSOs seek to shape the development of climate policies by actively engaging in international climate conferences.²⁰ They can participate in the official UNFCCC process by acting as accredited organizations,²¹ which grants them the opportunity to raise awareness for certain issues, lobby with governmental representatives and create networks of influence. Those organizations with strong ties to state delegations have the most advanced access and in some cases, civil society actors can even become members of national delegations and are “formally granted a ‘seat at the table’”.²² This increases their opportunities to influence governmental decisions since it provides them with access to closed sessions, official state documents and the possibility to present their own proposals.²³ Governmental delegations are interested in including CSOs because they provide expertise²⁴ and can enhance the legitimacy of their decisions.²⁵ CSOs, in contrast, use their close interaction with governments to exert

¹⁷ There is also an established literature on climate justice stemming from normative Political Science including Hiskes, ‘The Right to a Green Future: Human Rights, Environmentalism and Intergenerational Justice’ 27 *Human Rights Quarterly* (2005) 4, at 1346-1364; Caney, ‘Cosmopolitan Justice, Rights and Global Climate Change’, 19 *Canadian Journal of Law and Jurisprudence* (2006) 2, at 255-278; R.P. Hiskes, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice* (2009); Shue, ‘Human Rights, Climate Change and the Trillionth Ton’, in D.G. Arnold (ed.), *The Ethics of Global Climate Change* (2011) 292, at 314; Moellendorf, ‘Climate Change and Global Justice’, 2 *Wiley Interdisciplinary Reviews* (2012): at 131-143; D. Moellendorf, *The Moral Challenge of Dangerous Climate Change: Values, Poverty and Policy* (2014); Shue, ‘Human Rights, Climate Change and the Trillionth Ton’, in D.G. Arnold (ed.), *The Ethics of Global Climate Change* (2011) 292, at 314. It differentiates justice concerns between developing and developed states, societal groups, and today's and future generations.

¹⁸ della Porta and Parks, ‘Framing-Prozesse in der Klimabewegung: Von Klimawandel zu Klimagerechtigkeit’, in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 39, at 47.

¹⁹ Brunnengräber, ‘Zwischen Pragmatismus und Radikalisierung: NGOs und soziale Bewegungen in der internationalen Klimapolitik’, in M. Dietz and H. Garrelts (eds.), *Die internationale Klimabewegung: Ein Handbuch* (2013) 357, at 372.

²⁰ Bernauer and Betzold, ‘Civil Society in Global Environmental Governance’, 21 *The Journal of Environment and Development* (2012) 1, at 62-66.

²¹ Görg and Bedall, *supra* note 22, at 94-95.

²² Bernauer and Betzold, *supra* note 26, at 63.

²³ Böhmelt, Koubi and Bernauer, ‘Civil Society Participation in Global Governance: Insights from Climate Politics’, 53 *European Journal of Political Research* (2014), at 19.

²⁴ M.M. Betsill and E. Corell, Elisabeth (eds.), *NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations*, (2008).

²⁵ Bernauer and Betzold, *supra* note 26, at 63.

pressure for negotiating, ratifying and complying with international environmental agreements.²⁶

There are some particulars about TANs active at the international climate conferences: their networks are hybrid – actors may join for a short period of time and then leave again – and participating organizations can be quite diverse.²⁷ Although groups of the global South are usually underrepresented in these networks,²⁸ local CSOs from developing countries are increasingly funded by foundations and international CSOs as part of TANs to voice the concerns of local people adversely affected by climate change and climate policies at this international venue. TANs often have the expertise and experience needed to strategically use the information provided by local actors for lobbying purposes within the UNFCCC. Thus, TANs help explain how justice and human rights claims are transported from civil society to state negotiators.

This means actors work at various scales, they differ in their degree of institutionalization and in their positioning toward the UNFCCC process (inside/outside). Newer (and still evolving) network structures engage very closely with international institutions and sometimes even invite governmental delegates to participate, in particular if they bring in information from closed (intergovernmental) sessions or if they are open to introduce text passages prepared by CSOs in these sessions.²⁹

3. Case Study: The Human Rights and Climate Change Working Group

Network Building and Initial Successes

One important example of a TAN working closely with governmental delegations is the *Human Rights and Climate Change Working Group* (HRCCWG). The HRCCWG has been particularly active and successful in their attempt to promote human rights within the climate regime. The idea to launch this group was born in 2008 at COP 14 in Poznan, Poland and the

²⁶ Bernauer, Böhmelt, and Koubi, 'Is There a Democracy-Civil Society Paradox in Global Environmental Governance?' 13 *Global Environmental Politics* (2013) 1, at 88-107.

²⁷ Reitan, 'Coordinated Power in Contemporary Leftist Activism', in T Olesen (ed.), *Power and Transnational Activism* (2011) 51, at 72.

²⁸ Brunnengräber, *supra* note 25.

²⁹ Görg and Bedall, *supra* note 22, 94-95.

network became operative during the following COP in 2009 in Copenhagen, Denmark³⁰. The HRCCWG can be described as a hybrid network of predominantly civil society and single government representatives (mostly from IOs) operating at various scales – from the local to the global³¹ with the common objective of promoting and institutionalizing human rights in the climate regime. Among the networks’ members are prominent international CSOs, such as the Center for International Environmental Law, Earthjustice, Friends of the Earth and Carbon Market Watch, Human Rights Watch, Amnesty International, but also local CSOs from developing countries, gender advocates, indigenous peoples’ representatives, academics, representatives from IOs, like the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF, as well as single actors from state delegations³². Membership in the network is rather informal; participants can be present at one negotiation meeting joining the group’s activities there, and then miss out on the next one³³. Simultaneously, they can be part of another TAN active at the international climate conferences, including Climate Action Now, the REDD+ Safeguards Working Group or the Indigenous Caucus³⁴.

The Human Rights and Climate Change Working Group, among other TANs, was strongly involved in efforts to promote and institutionalize human rights in the climate regime at COP 16 in Cancun (Mexico) and at COP 21 in Paris (France). Members of the HRCCWG consider these negotiation sessions as reflecting incremental progress in the institutionalization of rights in climate governance.³⁵ The most important successes have been the following. *First*, in the preambulatory clauses of the Cancun Agreement, the UNFCCC member states recognized a Human Rights Council Resolution (HRC 10/4) on human rights and climate change stating that:

“[...] the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate

³⁰ Expert Interview, Representative of the Human Rights and Climate Change Working Group, 16 November 2013, COP 19 in Warsaw.

³¹ Expert Interview, Representative of an Indigenous Rights Organization, 16 November 2013, COP 19 in Warsaw.

³² Expert Interview, Representative from International CSO, 8 December 2016, COP 21 in Paris.

³³ Expert Interview, Academic and Activist, 17th November 2013, COP 19 in Warsaw.

³⁴ Ibid.

³⁵ Expert Interview, Academic and Activist, 17 November 2013, COP 19 in Warsaw; Expert Interview, Representative of the Human Rights and Climate Change Working Group, 16 November 2013, COP 19 in Warsaw; Expert Interview, Representative of an Environmental Think Tank, 16 November 2013, COP 19 in Warsaw, Expert Interview, Representative from AIDA (Interamerican Association for Environmental Defense), via Skype after COP 21 in Paris, 4 February 2016; Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016; Expert Interview, Representative of the OHCHR, at COP 21 in Paris, 10 December 2015.

change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability.”³⁶

This means that there is a consensus that rights are adversely affected by climate change impacts. *Second*, in the operative part of the Cancun Agreement, member states announced that: “[...] parties should, in all climate-change related actions, fully respect human rights”.³⁷ These actions, of course, refer to all climate policy initiatives introduced under the legal framework of the UNFCCC and the Kyoto Protocol. *Third*, the first procedural rights, also known as safeguards, were institutionalized as a requirement for the implementation of REDD+ programs in Annex one of the Cancun Agreement. This means that the rights to participation, information, transparency and free prior and informed consent need to be respected for local communities affected by the realization of REDD+ programs. The rights, knowledge and (land) ownership of indigenous peoples are particularly emphasized here.³⁸ *Fourth*, a review of the modalities and procedures of the CDM is underway. During COP 19 in 2013 in Warsaw and during the Intersessionals in 2014 and 2015 in Bonn, states (and CSOs) discussed stronger stakeholder consultation requirements and several references stating that activities under the CDM have to be carried out in accordance with human rights.³⁹ It can be expected that procedural rights will enter CDM policies in the future.⁴⁰ *And finally*, human rights have again been anchored in the preambulatory clauses of the Paris climate treaty in 2015. It stipulates that state parties should:

“(...) when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”⁴¹

³⁶ UNFCCC/CP, United Nations Framework Convention on Climate Change/ Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, FCCC/CP/2010/7/Add.1, 15 March 2011.

³⁷ Ibid.

³⁸ UNFCCC/AWG-LCA, United Nations Framework Convention on Climate Change/ Ad Hoc Working Group on Long-term Cooperative Action under the Convention: Negotiating Text, FCCC/AWGLCA/2010/14, 13 August 2010.

³⁹ Filzmoser, ‘Clean Development Mechanism’, in Human Rights and Climate Change Working Group (ed.), *Summary of Rights-Related Developments at COP 19* (2013) 1, at 2.

⁴⁰ Schade and Obergassel, ‘Human Rights and the Clean Development Mechanism’, *27 Cambridge Review of International Affairs* (2014) 4, at 717-735.

⁴¹ UNFCCC, Paris Agreement, FCCC/CP/2015/L.9/Rev.1, 12 December 2015.

Network Strategies

The most successful strategy the HRCCWG employed for achieving its objectives has been to build friendly relations with state representatives at the climate negotiations. Making use of these receptive relations, the network receives access to negotiating texts and attempts to include human rights language in respective drafts asking state parties to introduce these drafts in closed negotiation sessions:

“Most of the actual negotiating meetings have been closed to me because I’m civil society but a lot of times I’ll go and network with parties [...] and we’re staying outside the door and if we have position papers on different things, we’ll ask parties to introduce an item or [...] we write an email [...] and ask to] consider it or anything. One of our [...] points is actually looking at the text, examining it, seeing places that we could think could be improved to better support the issues that we want them to support and then actually suggesting language. And parties actually take it up and are really excited about it.”⁴²

Relations with state parties are particularly well-established if the negotiators are open to human rights arguments due to their own liberal democratic state identity, increased pressure by domestic CSOs, or if they rely on the network’s expertise and capacities like a number of developing countries do⁴³. If the latter is the case, network members provide their expert knowledge and attend sessions on behalf of small delegations that cannot afford to travel to the negotiations with a large number of staff. This means, civil society actors become officially registered on respective state delegations and draft texts for them that can be introduced in meetings officially closed for non-state observers:

“Many parties have so little capacities to follow half of the issues that it’s actually very helpful to them if there is something drafted and they can either redraft it, interpret it or be able to kind of introduce it as it is. Their country position goes well with the language, they just didn’t know, they didn’t have time to actually formulate the language and so, you know, we are advocates but at the same time [...] technical experts on gender issues, you know, this has helped to influencing the agenda.”⁴⁴

⁴² Expert Interview, Representative of a Women’s Rights Organization, 15 November 2013, COP 19 in Warsaw.

⁴³ Ibid., Expert Interview, Academic and Activist, 17 November 2013, COP 19 in Warsaw, Wallbott and Schapper, *supra* note 6.

⁴⁴ Expert Interview, Representative of a Women’s Rights Organization, 15 November 2013, COP 19 in Warsaw.

To justify the use of human rights language in climate agreements, the HRCCWG frequently works with case studies emphasizing the adverse effects of climate change and climate policies on local people from Asia, Latin America but also Africa.⁴⁵ At the climate negotiations, case studies are usually presented during so-called side events⁴⁶ that run parallel to the meetings of state parties and are accessible to all, governmental delegations but also non-state observer groups, including civil society, the business community, representatives from religious organizations and academics. Cases on problematic rights situations are sometimes presented by locally affected people, e.g. indigenous or pastoralist groups, themselves. Some international partners of the HRCCWG have in the past sponsored representatives of these local groups to join international meetings, share their experiences and bring forward corresponding demands. TANs help to process these cases demonstrating that there are severe drawbacks in the body of rules and regulations of climate policies, such as REDD+ and the CDM, and to voice their demands for change in the modalities and procedures of such instruments.⁴⁷ In this way, local claims are fed into the international negotiation process. A representative from an international CSO summarizes their objective of transporting local claims to the international negotiation table with the following words:

“The way we do our research is really go into the field and speak with the people on the ground, do many many interviews, speak with everyone, not only the communities that are affected but of course also, you know, government and, [...] especially in a context where not everyone is able or, financially able or just generally can participate in these kind of high-level discussions and so, of course, in a COP like here there are many groups from different countries but still if you think about representation, these won’t be the most disadvantaged people that will make it to these international negotiations. So I think this is also what we are trying to do with our work generally but also in this context is kind of bringing the voices of those that are not usually being heard to the international negotiations.”⁴⁸

⁴⁵ Expert Interview, Representative of an Environmental Think Tank, 16 November 2013, COP 19 in Warsaw.

⁴⁶ Expert Interview, Representative of an Indigenous Rights Organization, 16 November 2013, COP 19 in Warsaw.

⁴⁷ Expert Interview, Representative of an Environmental Think Tank, 16 November 2013, COP 19 in Warsaw.

⁴⁸ Expert Interview, Representative from an International CSO, 8 December 2015, COP 21 in Paris.

Whereas the initial focus of the HRCCWG was on framing emission reductions as a human rights obligation, there is a clear emphasis on response measures and their impact on local populations in developing countries now.⁴⁹ Thus, procedural human rights, and especially the right to participation, lie at the heart of the network's activities.⁵⁰ Altogether, we can find a two-way-process here: local advocates inform the policy-making process of states within the forum of an international organization and their decisions may, in return, possibly affect climate policy implementation at the local level.⁵¹

Enhanced Outreach on the Road to Paris

On the road to Paris, two key representatives of the HRCCWG initiated an inter-constituency alliance in order to combine the strengths of several civil society networks at the negotiations of a new climate treaty. The constituencies at the UNFCCC negotiations are clustered groups of officially registered CSOs sharing certain interests and acting as observers in the process, among them environmental CSOs (ENGO), indigenous peoples organizations (IPOs), youth CSOs (YOUNGO), or women and gender (WOMEN AND GENDER). Participation in a constituency comes with several advantages: it allows observers to make interventions at certain points in the state negotiation process, it facilitates the use of focal points for better coordination with the UNFCCC Secretariat and it enhances flexible information-sharing.⁵² Prior to the Paris negotiations, an inter-constituency alliance was established due to the fact that most observer organizations shared some common concerns. Among them were the protection and fulfillment of human rights, in particular the right to health and food security, indigenous peoples' rights, a just transition of the workforce and the creation of decent jobs, gender equality and equal participation of women as well as inter-generational equity.⁵³

Besides initiating and coordinating the inter-constituency alliance, there were also other changes to the HRCCWG leading to a strengthening of its advocacy efforts. After they had

⁴⁹ Expert Interview, Academic and Activist, 17 November 2013, COP 19 in Warsaw.

⁵⁰ Expert Interview, Representative of the Human Rights and Climate Change Working Group, 16 November 2013, COP 19 in Warsaw; Expert Interview, Representative of an Environmental Think Tank, 16 November 2013, COP 19 in Warsaw.

⁵¹ Expert Interview, Representative of an Indigenous Rights Organization, 16 November 2013, COP 19 in Warsaw.

⁵² UNFCCC, *Nongovernmental organization constituencies* (2014), available at https://unfccc.int/files/parties_and_observers/ngo/application/pdf/constituency_2011_english.pdf, (last visited 24 June 2016).

⁵³ Inter-constituency Proposal for Paragraph 15, circulated among the HRCCWG mailing group on 11 June 2015.

commenced working mainly with environmental law organizations, representatives from indigenous peoples', and women's rights CSOs, the major non-governmental human rights players, Human Rights Watch (HRW) and Amnesty International (AI), came on board at the COP in Lima in 2014. A common Greenpeace-Amnesty statement as well as a widely-spread common press release by HRW and AI during the Paris negotiations marked the arrival of the large human rights CSOs in the network.⁵⁴

In addition to these new non-governmental partners from the human rights regime, state actors joined the working group as well. Among them were mainly IOs, like the OHCHR and UNICEF. Both took an active part in the network, further developed its strategy at the coordination meetings and engaged in awareness-raising activities targeting state delegates.⁵⁵

Besides IOs, there were also some states taking an active part in the promotion of human rights in the climate agreement. Already prior to the negotiations, eighteen governments took action and initiated the *Geneva Pledge for Climate Action* calling for enhanced institutional interaction between the UNFCCC and the OHCHR, and emphasizing that human rights obligations need to be observed in all climate-relevant actions. Among the committed states were mostly Latin American countries (e.g. Mexico, Peru, and Costa Rica), many small island states (e.g. Maldives, Kiribati and Samoa) as well as few European nations (e.g. France, Sweden and Ireland).⁵⁶

Another great push for human rights in the climate regime came from increased media attention and a successful twitter campaign. Under #Stand4Rights the HRCCWG and several of their partners, disseminated information regarding new versions of the negotiating text including human rights, spread the word on further awareness-raising actions and put pressure on governments who argued against rights in the climate agreement during the negotiations. An interesting example for the latter is the use of the #Stand4Rights to tweet a joint press

⁵⁴ Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016.

⁵⁵ Expert Interview, Representative from OHCHR, at COP 21 in Paris, 10 December 2015.

⁵⁶ *Geneva Pledge for Climate Action* (2015), available at:

http://www.forestpeoples.org/sites/fpp/files/news/2015/02/Annex_Geneva%20Pledge.pdf (last visited 31 January 2017).

release by Amnesty International and Human Rights Watch that blamed and shamed those countries that were severely blocking human rights language in the climate treaty at that point, namely the USA, Saudi Arabia and Norway.⁵⁷ Everyone on the mailing list of the HRCCWG was asked to re-tweet this press release and the wide public attention around this, led to immediate reactions of the opponents. Norway, for instance, released an official statement emphasizing that it supports human rights in the operative part of the treaty but not in article two (which sets out the purpose of the agreement).⁵⁸

Moreover, several high-quality media outlets, among them the Guardian, took up the issue because human rights as bracketed text were still part of the operative clauses of the agreement in the pre-final draft and thus, remained one of the outstanding questions to be decided upon until the very end of COP 21.⁵⁹ Several representatives from the HRCCWG evaluated this as a significant success in public awareness-raising and learning on human rights in the context of climate change.⁶⁰

Thus, prior to and in Paris, the network was benefitting from an enhanced outreach including combined strengths in the inter-constituency alliance, active participation of international governmental organizations and state actors as well as increased press and social media coverage. All of these aspects led to an at least partial success – the institutionalization of human rights in the preamble of the new climate agreement.

⁵⁷ Human Rights Watch, *Human Rights in Climate Pact Under Fire* (2015), available at: <https://www.hrw.org/news/2015/12/07/human-rights-climate-pact-under-fire> (last visited 1 February 2017).

⁵⁸ Government of Norway, *COP 21: Indigenous Peoples, Human Rights and Climate Change*, available at: <https://www.regjeringen.no/no/aktuelt/cop21-indigenous-peoples-human-rights-and-climat-changes/id2466047/> (last visited 1 February 2017).

⁵⁹ The Guardian, *Climate Talk: Anger Over Removal of Human Rights Reference from Final Draft* (2015), available at: <https://www.theguardian.com/global-development/2015/dec/11/paris-climate-talks-anger-removal-reference-human-rights-from-final-draft> (last visited 1 February 2017).

⁶⁰ Expert Interview, Representative from International Organization, via Skype after COP 21 in Paris, 4 February 2016.

4. Explaining Institutional Interaction Between the Human Rights and the Climate Regime

What representatives of the HRCCWG have described as initial successes in institutionalizing human rights in the climate regime can best be explained with insights from scholarship on institutional interaction or regime interplay.⁶¹ Institutional interaction means that the institutional development or effectiveness of one institution becomes affected by another institution.⁶² Interaction can also occur across policy fields leading to both, conflict or synergy. So far, the literature has predominantly focused on investigating cases of inter-institutional conflict.⁶³ Instances of interaction with synergetic effects have received less attention yet. One focus in the literature on institutional interaction is to identify causal mechanisms of influence exerted from one source institution to a specific target institution.⁶⁴ These comprise, first of all, cognitive interaction, or learning. Here, the source institution disposes of insights that it feeds into the decision-making process of the target institution.⁶⁵ Second, interaction through commitment means that the member states of a source institution have agreed upon commitments that might be relevant for the members of the target institution as well. If there is an overlap of membership, the commitments made in the source institution can lead to differing decision-making in the target institution.⁶⁶ Third, behavioral interaction comes into play if the source institution has obtained an output initiating behavioral changes that is meaningful for the target institution. In cases like this, the initiated changes in behavior can foster further behavioral changes.⁶⁷ And fourth, impact-level interaction is based on a situation of interdependence, in which a “functional linkage”⁶⁸ between the governance objectives of the institutions can be observed. If the source institution obtains an output that has an effect on the objectives of the source institution, this impact can also influence the objectives (and effectiveness) of the target institution.⁶⁹

⁶¹ O.R. Young, *The Institutional Dimensions of Environmental Change: Fit, Interplay, and Scale* (2002); S. Oberthür and O.S. Stokke (eds.), *Managing Institutional Complexity: Regime Interplay and Global Environmental Change* (2011).

⁶² Gehring and Oberthür, ‘Introduction’, in S. Oberthür and T. Gehring (eds.), *Institutional Interaction in Global Environmental Governance: Synergy and Conflict among International and EU Policies* (2006) 1, at 6.

⁶³ Andersen, ‘The Time Dimension in International Regime Interplay’, 2 *Global Environmental Politics* (2002) 3, at 98-117; Zelli, ‘The Fragmentation of the Global Governance Architecture’, 2 *Wiley Interdisciplinary Reviews: Climate Change*, (2011) 2, at 255-270.

⁶⁴ Gehring and Oberthür, *supra* note 68, at 6-7.

⁶⁵ Gehring and Oberthür, ‘The Causal Mechanisms of Interaction between International Institutions’, 15 *European Journal of International Relations* (2009) 1, at 133.

⁶⁶ *Ibid.*, at 136.

⁶⁷ *Ibid.*, at 141-142.

⁶⁸ Young, *supra* note 56.

⁶⁹ Gehring and Oberthür, *supra* note 71, 143-144.

Learning as Key Mechanism of Interaction

In this paper, I argue that it makes sense to delve deeper into understanding cognitive interaction or learning as this can initiate all other forms of interaction. The concept of policy learning can provide important insights in this respect. Whereas some scholars understand learning as altered behavior or preferences of a rational actor based on modified information, i.e. policy change⁷⁰, others claim that policy change does not necessarily have to take place when policy learning occurs. Thus, they clearly distinguish between policy learning and policy change arguing that learning already takes place if there is a clearly identifiable debate in a respective forum, e.g. the domestic parliament or an international conference, based on new knowledge.⁷¹ In this paper, I will adopt this latter understanding of policy learning. I will particularly concentrate on how knowledge about policy in one jurisdiction is disseminated, debated and taken into account for developing policies in another jurisdiction.⁷²

The research programme on policy learning, understood in this way, differs from scholarship on policy transfer, policy diffusion and policy convergence. Policy learning is broader; it might take place even though there is only partial convergence of policy instruments, i.e. a tool or an instrument is only partially adopted. It might also take place if there is a potential non-adoption or “non-transfer” of a policy tool. And its emphasis, in contrast to studies on policy transfer, diffusion or convergence, is not necessarily on macro factors or institutional conditions but on the role of actors.⁷³ In the environmental area, the role of actors as “teachers” or “exporters” of knowledge is particularly under-researched, even more so if these knowledge transmitters are non-governmental organizations or TANs.⁷⁴

Scholarship on policy learning differentiates between three types of learning processes: (1) Political learning refers to actors learning how to become better advocates and more effective in promoting certain policies.⁷⁵ In this way it can be understood as a form of tactical learning. (2) Instrumental learning is about knowledge to improve policies⁷⁶ or learning about policy designs and instruments.⁷⁷ Thus it is much more focused on processes and tools. (3) Social

⁷⁰ H Heclo, *Modern Social Politics in Britain and Sweden. From Relief to Maintenance* (1974); Hartlapp, ‘Learning about policy learning. Reflections on the European Employment Strategy’, 13 *European Integration online papers*, (2009) 1, Art. 7., <http://eiop.or.at/eiop/texte/2009-007a.htm>.

⁷¹ S Veenman and D Liefferink, ‘Transnational communication and domestic environmental policy learning’, 7 *ESSACHESS - Journal for Communication Studies*, (2014), 1, at 147-167.

⁷² E Bomberg, ‘Policy learning in an enlarged European Union: environmental NGOs and new policy instruments’, 14 *Journal of European Public Policy*, (2007) 2, at 256.

⁷³ *Ibid.*, at 255-256.

⁷⁴ *Ibid.*, at 248-250.

⁷⁵ P May, ‘Policy learning and failure’, 12 *Journal of Public Policy*, (1992) 4, at 332.

⁷⁶ P Sabatier, ‘An advocacy coalition framework of policy change and the role of policy-oriented learning therein’, 21 *Policy Sciences* (1988) 2, at 129–68.

⁷⁷ May, *supra* note 78, at 335.

learning is deeper in the sense that it relates to the social construction of certain problems, ideas and values of policy-makers and how policy objectives are adjusted in light of these principles (or these principles are adjusted in light of certain policy goals), (May 1992, Hall 1993).⁷⁸ TANs can promote all three types of learning processes.

How Do TANs Promote Learning about Human Rights Effects of Climate Policies?

For developing a better understanding of institutional interaction between the human rights and the climate regime, the micro-macro link⁷⁹, i.e. the mechanisms at play between the micro-level of actors and the macro-level of institutions, needs to be further established. Here, constructivist International Relations models highlighting the mutually constitutive character of actors and structures might be able to enrich rational choice-oriented institutionalist theories, i.e. scholarship on institutional interplay. Research on TANs⁸⁰ provides useful insights that help understand how CSOs use information, symbols, moral and accountability arguments to motivate IOs and their member states to learn about and/or change their policies.

Keck and Sikkink have developed a typology of tactics of TANs to understand their interactions with state actors in more depth. They highlight (1) *information politics* understood as strategically using information, (2) *symbolic politics* as to draw on symbols and stories to highlight a situation to a target audience that might be geographically distant, (3) *leverage politics* as network actors being able to gain moral or material leverage over state actors and IOs as well as (4) *accountability politics* referring to formerly adopted norms and policies of governmental actors and obligations to comply with them.⁸¹

At the climate conferences, a similar pattern can be observed: local CSOs provide information on rights infringements in climate policy implementation in certain states to advocacy networks. TANs, like the Human Rights and Climate Change Working Group, use this information to mobilize other actors of the human rights regime (*information politics*). At side events, for example, TANs encourage local actors to share their cases and stories from home countries to raise awareness about adverse human rights effects of both climate impacts and

⁷⁸ Ibid., P. Hall, 'Policy paradigms, social learning and the state: the case of economic policymaking in Britain', 25 *Comparative Politics*, (1993) 2, at 275–297.

⁷⁹ B. Buzan, C. Jones and R. Little, *The Logic of Anarchy: From Neorealism to Structural Realism* (1993); Gehring and Oberthür, *supra* note 57.

⁸⁰ Keck and Sikkink, *supra* note 3.

⁸¹ Ibid., at 16-25.

climate policies (*symbolic politics*). These cases are presented as instances of climate injustice in which local population groups who have contributed little to greenhouse gas emissions and have few resources to adapt cannot fully enjoy their human rights due to climate impacts or experience severe rights infringements due to climate policies. This creates moral leverage over states that have historically contributed to emissions and that are implementing climate policies in developing countries (*leverage politics*). Moreover, TANs persuade states to vote for an incorporation of human rights into climate agreements, and more particularly procedural rights into climate policies. Mechanisms of persuasion (and discourse) function according to a logic of appropriateness (or a logic of arguing) and are particularly successful with (often liberal democratic) states governments⁸² that have already legally committed to human rights understanding them as part of their state identity, e.g. European states like France, Sweden and Ireland (*accountability politics*).

In this way, information politics, symbolic politics, leverage politics and accountability politics help to explain how TANs foster policy learning among state negotiators. For both, actors within TANs and negotiators, this implies learning how to become better advocates and more effective in promoting certain policies, i.e. political learning (May 1992: 332). Moreover, it is also about knowledge on how to improve policies or the design of policy instruments, i.e. instrumental learning (Sabatier 1988, May 1992: 335). For some negotiators, it also leads to deeper forms of social learning as it relates to ideas and values of policy-makers and objectives to create climate policies that are consistent with basic human rights. This became particularly visible in discussions around article 2 of the Paris Agreement that defines its purpose. A number of states were in favor of including a text passage stating that human rights protection is the purpose of the agreement. Although this text passage was hotly debated until the very end of the negotiations, it was removed from the operative part of the text in the very end.

Actively engaged and in favor of rights institutionalization are Latin American countries with strong CSO movements representing local community's and indigenous peoples' concerns. Among them are Mexico, Peru, Costa Rica, Guatemala and Uruguay. Also in favor of rights institutionalization are small island states, such as the Maldives, Kiribati, Samoa or the Philippines, fearing severe climate change consequences for the citizens living on their territory. Some states, among them many European ones, try to pressure less democratic states

⁸² T. Risse and S.C. Ropp, 'Introduction and Overview', in T. Risse, S.C. Ropp and K. Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (2013) 3, at 16.

to vote in favor of rights institutionalization claiming that they will not fund climate policies with adverse right affects anymore, such as REDD+ and CDM programs. Thus, they use negative incentives or sanction mechanisms that function according to a logic of consequences.⁸³

Cost-benefit calculations of state actors are an important mechanism explaining why states refrain from supporting human rights in the climate regime. Governments like the US, for instance, have remained opposed to rights institutionalization in the operative part of the Paris Agreement⁸⁴ (and in previous negotiations) because they fear costly obligations and demands for compensation:

“And the US, for example, it’s like they refuse to talk about human rights. Refuse. It’s a non-starter. It’s like a totally toxic kind of issue to bring to them. [...] If you follow the Human Rights Council discussions and dialogues, the US refuses to talk about climate change in the human rights regime as well. For exactly the same reason. It’s like the loss and damage negotiations are playing out here for a reason, they won’t talk about climate change in a human rights context because they don’t want to be held liable for historic contributions to climate change.”⁸⁵

The strong emphasis on economic, social and cultural rights in the context of climate change impacts also leads to the US remaining highly skeptical regarding rights institutionalization in the climate regime.⁸⁶ African countries, in contrast to that, rather fear that conditionalities are being imposed on them when implementing climate policies funded by Annex I parties (i.e. developed states). They emphasize their state sovereignty and are concerned that deficiencies in their domestic rights situation could be exposed – and that the international community would interfere in their domestic affairs with the help of procedural rights in climate policies.⁸⁷

⁸³ Ibid., at 14.

⁸⁴ At the Paris negotiations, the US actually spoke in favor of human rights but did not agree to them being included in article two outlining the purpose of the agreement. Human Rights Watch, *supra* note 63.

⁸⁵ Expert Interview, Coordinator of the Human Rights and Climate Change Working Group, 16 November 2013, COP 19 in Warsaw.

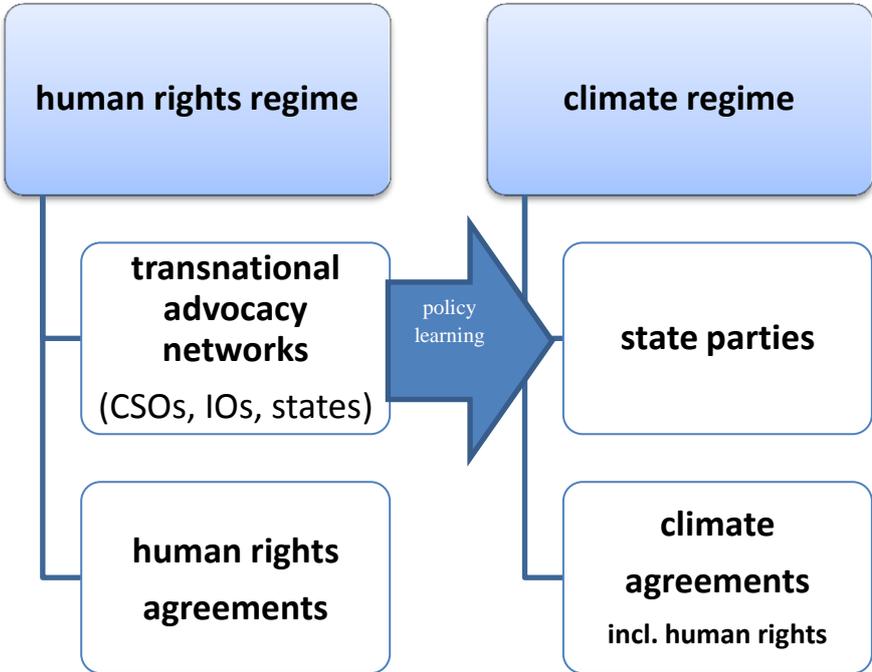
⁸⁶ See also Alston, ‘Putting Economic, Social and Cultural Rights Back on the Agenda of the United States’, in W. F. Schulz (ed.), *The Future of Human Rights: U.S. Policy for a New Era* (2008).

⁸⁷ See also Wallbott and Schapper, *supra* note 6.

In sum, actors like TANS and their activities at the international climate negotiations, help to understand how policy makers learn about the human rights effects of their policies. Policy learning explains how cognitive interaction and interaction through commitment can be initiated. Behavioral interaction and impact-level interaction can probably rather be observed at later stages – when the Paris Agreement with its commitment to human rights is being implemented. And here, compliant state action will be most necessary.

Figure one displays institutional interaction between the human rights and the climate regime.

Figure 4.1: Institutional Interaction Between the Human Rights and the Climate Regime



Source: Own compilation

5. Conclusion

The objective of this paper was to demonstrate how close state-society interaction can foster the institutionalization of human rights in the international climate regime. Those civil society actors and transnational advocacy networks collaborating intensively with state actors are much more likely to achieve moderate gains for the inclusion of human rights in climate politics. With the help of information politics, symbolic politics, moral leverage and accountability politics TANS initiate learning processes that lead state representatives to recognize human rights in the climate regime. The empirical evidence gathered mainly from

expert interviews at the international climate negotiations in Warsaw 2013 and in Paris 2015, primary documents and participatory observations of the HRCCWG strategic meetings, suggests that political learning, instrumental learning and partly social learning takes place among the negotiators. This has so far led to an acknowledgement of the human rights implications of climate change in the preambulatory clauses of the Cancun Agreements in 2010, a binding statement that all climate-related actions have to be carried out in accordance with human rights norms and an inclusion of procedural rights in REDD+ policies.⁸⁸ In Paris 2015, states agreed to include a reference to respecting, promoting and considering human rights in climate-relevant action in the preamble (UNFCCC 2015) but not in the operative part of the agreement.⁸⁹ The intensive discussions around article 2 including human rights as the purpose of the Paris agreement, however, shows that rights norms play an increasing role in climate politics and that social learning regarding the rights effects of climate policies are underway – at least among some of the negotiators.

⁸⁸ UNFCCC/CP, *supra* note 42.

⁸⁹ UNFCCC, *supra* note 47.