

The shifting role of cities in the global climate change regime: From Paris to Pittsburgh and back?

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In recent years cities have asserted themselves as relevant actors in the global climate change regime. International law practice and scholarship has so far only partly embraced this development. The self-asserting move of cities on the global level has been accompanied by a rhetoric according to which States would have failed to live up to their responsibilities with respect to the fight against climate change. Instead, cities would be well-positioned to fill this governance gap, in particular through global networks such as ICLEI and C40. This contribution discusses how this narrative is affected by the entry into force of the Paris Agreement on climate change. This was seen as a milestone for the global climate change regime. The Paris Agreement and the decision adopting it are also evidence for a cautious embrace of the importance of cities and other subnational authorities in this field. Yet, new questions arise after the announcement by the United States of their intent to withdraw from the Paris Agreement. This has generated more attention than ever for what cities and other subnational authorities can do in this field. At the same time, the struggle between the US federal executive and US cities is emblematic for a wider debate on the future of the international (legal) order: how will the balance between States as central actors of the international system on the one hand and an increasingly assertive league of cities and subnational authorities be struck?

1 | INTRODUCTION

'I was elected to represent the citizens of Pittsburgh, not Paris.'¹ With these words, President Donald Trump announced his intention on 1 June 2017 for the United States to withdraw from the Paris Agreement on climate change. Although it remains to be seen whether, when and how the United States will formally withdraw from the Paris Agreement, the announcement has been a watershed. The adoption of the Paris Agreement in 2015 was a landmark in the global fight against climate change.² Despite numerous uncertainties about the scope and bindingness of the Agreement, it was hailed as a much-needed step forward after the long deadlock in the

negotiations for an international agreement on the mitigation of and adaptation to climate change. The fact that the Agreement entered into force already one year after its adoption was heralded as a further sign that things were moving in the right direction in the global climate change regime. Amidst numerous signs of doom and decline, the Paris Agreement thus became a rare symbol of hope in today's international relations. The Trump declaration has cast a shadow of doubt on the fortunes of the Agreement and on the question of whether it will be able to set humanity on a path towards an effective implementation of measures needed to curb climate change and keep its potentially disastrous consequences under control.

As a side effect of the announced US withdrawal, a specific kind of actor in the global climate change regime has received even more attention than before: cities and subnational authorities. Immediately following the announcement by President Trump, representatives of US cities, states and business leaders announced that they would submit a plan to the United Nations Framework Convention on

¹The White House, 'Statement by President Trump on the Paris Climate Accord' (1 June 2017) <<https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>>.

²Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 55 ILM 740.

Climate Change (UNFCCC) Secretariat in order to make up for the withdrawal of the United States.³ Since then, this has resulted in a dedicated website 'We are still in', which records the action that subnational authorities as well as the private sector have undertaken since the announcement of the US withdrawal.⁴ Also, the Mayor of Pittsburgh emphasized that he intended to follow the 'guidelines' of the Paris Agreement irrespective of a withdrawal from the agreement by the United States.⁵ Is it possible that subnational authorities – alongside the private sector – will step in where a nation State cops out?

This article discusses a topic which is still at the margins of the international law discourse. Cities and subnational authorities more generally are not widely recognized as relevant actors in international law.⁶ Yet, cities have become more and more assertive to position themselves as globally relevant actors in recent years.⁷ This move has been most noticeable in the climate change context.⁸ A burgeoning number of associations of cities have sprung up. They range from grassroots associations such as ICLEI – Local Governments for Sustainability⁹ to more exclusive clubs such as the C40 – Cities Climate Leadership Group.¹⁰

This development – the creation of transnational networks of cities and other subnational authorities in the climate change context – is just one example of a wider phenomenon. We can see cities asserting themselves on the international level in a wide array of different policy fields. These include security, health governance, development cooperation and a move towards a bottom-up form of implementing human rights.¹¹ This article will zoom in on the specific context of the global climate change regime. It is in this context that cities have first established a narrative why they are necessary actors for the solution of a genuinely global problem. In this context, they have also been particularly successful in establishing themselves as relevant actors and stakeholders. This relevance is of course hard to

measure in objective terms. But it is noticeable how cities and the networks they have created have absorbed the attention of a whole host of different policymakers. From the United Nations (UN) Secretary-General over influential transnational corporations to the Pope, a wide variety of stakeholders have recognized that cities are important actors on the global level, in a way in which that was not imaginable a couple of years ago.¹²

The narrative that cities use has consisted of pointing towards the failures of the traditional forms of inter-State diplomacy. 'States talk, cities act' has become a central trope for justifying why cities are called upon to solve a global problem.¹³ Pundits and policymakers have assisted in orchestrating this move. Benjamin Barber's *If Mayors Ruled the World* is the title of a book emblematic for this mission. Its subtitle *Dysfunctional Nations, Rising Cities* drives home the message that the age of the nation State is (once again?) over.¹⁴

This article argues that it is time to rethink this narrative for two reasons: First, the entry into force of the Paris Agreement shows that the supposedly dysfunctional UN climate change regime has shown that it can deliver more than many were willing to believe during the arduous discussions about a follow-up to the Kyoto Protocol in the 2000s. Accordingly, cities and their associations now need to reflect upon whether it is necessary to recalibrate their central narrative. This need for recalibration might also be related to the different stages in the life of the Paris Agreement. Whereas cities and their networks were much needed to exert pressure on States to adopt a legally binding agreement in the run-up to Paris, this calculus shifts once the Agreement has entered into force.¹⁵ Now, their help is needed in order to make the Agreement a success, all the more so as States are generally falling behind what is needed in order to remain on track (or get on track, in the first place) if only for the less ambitious goal to keep global warming well below an increase of 2°C in comparison to pre-industrial levels. Accordingly, the article will discuss how cities and their climate change activities have been accommodated by the global climate change regime. The article focuses primarily on questions of mitigation, all the while noting that of course other aspects of climate change governance can be of equally important significance. A central argument that the article develops is that it is ultimately the ambiguity of the climate change regime – its constant shifting back and forth between

³H Tabuchi and H Fountain, 'Bucking Trump, These Cities, States and Companies Commit to Paris Accord' (New York Times, 1 June 2017).

⁴<<https://www.wearstillin.com/>>.

⁵L Gambio, 'Pittsburgh Fires Back at Trump: We Stand with Paris, Not You' (The Guardian, 1 June 2017).

⁶For a cautious mention, see J Klabbers, *International Law* (2nd edn, Cambridge University Press 2017) 73; pioneering works on cities as global actors from a legal perspective include Y Blank, 'The City and the World' (2006) 44 *Columbia Journal of Transnational Law* 868; G Frug and D Barron, 'International Local Government Law' (2006) 38 *The Urban Lawyer* 1; J Nijman, 'The Future of the City and the International Law of the Future' in S Muller et al (eds), *The Law of the Future and the Future of Law* (TOAEP 2011) 213.

⁷T Herrschel and P Newman, *Cities as International Actors: Urban and Regional Governance beyond the Nation State* (Palgrave Macmillan 2017).

⁸See HP Aust, 'Shining Cities on the Hill? The Global City, Climate Change and International Law' (2015) 27 *European Journal of International Law* 255; J Setzer, 'Testing the Boundaries of Subnational Diplomacy: The International Climate Action of Local and Regional Governments' (2015) 4 *Transnational Environmental Law* 319.

⁹<www.iclei.org>.

¹⁰<www.c40.org>.

¹¹S Curtis, 'Global Cities and the Ends of Globalism' (2018) 12 *New Global Studies* 75, 82; for a broader treatment, see HP Aust, *Das Recht der globalen Stadt – Grenzüberschreitende Dimensionen kommunaler Selbstverwaltung* (Mohr Siebeck 2017); on the human rights law context, see B Oomen and M Baumgärtel, 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law' (2018) 29 *European Journal of International Law* 607.

¹²See, e.g., UN News, 'UN Forum Spotlights Cities, Where Struggle for Sustainability "Will be Won or Lost"' (11 July 2018) <<https://news.un.org/en/story/2018/07/1014461>>; Siemens, 'C40 und Siemens zeichnen Städte für Vorreiterrolle im Klimaschutz aus' (23 September 2014) <<https://www.siemens.com/press/de/pressemitteilungen/?press=/de/pressemitteilungen/2014/infrastructure-cities/ic20140912.htm>>; and C40, 'Global Mayors, Pope Find Common Purpose' (21 July 2015) <https://www.c40.org/blog_posts/global-mayors-pope-find-common-purpose>.

¹³Cf. S Curtis, 'Introduction' in S Curtis (ed), *The Power of Cities in International Relations* (Routledge 2014) 1, 4; see also on rhetorical moves of city association M Acuto, *Global Cities, Governance and Diplomacy: The Urban Link* (Routledge 2013) 124.

¹⁴B Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (Yale University Press 2013).

¹⁵On this change, see S Chan, C Brandi and S Bauer, 'Aligning Transnational Climate Action with International Climate Governance: The Road from Paris' (2016) 25 *Review of European, Comparative and International Environmental Law* 238; K Bäckstrand, JW Kuyper, BO Linnér and E Löwbrand, 'Non-State Actors in Global Climate Governance: From Copenhagen to Paris and Beyond' (2017) 26 *Environmental Politics* 561, 562.

bindingness and non-bindingness, formality and informality – which serves as an enabler for the growing importance of cities as actors in this context.

The second reason for rethinking the central narrative underpinning the rise of cities as global actors results from the changing political climate in a number of different States.¹⁶ The United States is a case in point and will be used by way of example here. While the current US political climate may in many instances be an outlier, it is at the same time representative for a broader trend in which urban and non-urban areas are increasingly viewed as being at odds with each other.¹⁷ At first sight, the announcement of the imminent US withdrawal might be said to bolster the claim of cities that it is now their turn to act. Yet, a more marked divide between the federal level and cities in the United States also risks a growing polarization and thereby a further disintegration of the democratic process. This can potentially lead to more 'pre-emption laws' by states and the federal government trying to narrow down the options that subnational actors have to become engaged in the field of climate change.¹⁸ In this respect, a related development concerns the so-called 'sanctuary cities'.¹⁹ This movement dates back to the 1980s in the United States and generally marks local jurisdictions which refuse to comply with federal immigration agencies in the enforcement of federal immigration law.²⁰ It is noticeable that a similar polarization exists in the two fields. Liberal constituencies in various cities and counties in the United States have become more and more alienated from federal government policies in climate change issues as well as with respect to immigration. The question is to what extent the local level can use existing leeway in these fields and how the federal executive (and, in some instances, the state level) can counter such efforts.

At the outset, a few words about definitions are in order. I am using the terms 'cities' and 'subnational authorities' pretty much interchangeably. There is no uniform definition of these terms in international law. Cities and subnational authorities vary considerably with respect to their organizational set-up and competences in different jurisdictions.²¹ Accordingly, the terms are here used in the way that they refer to the local level of government within a given State. It is understood that the term subnational authorities may also refer to the component units of a federal State. It is also used in

some contexts, however, as an umbrella term for local and regional authorities.²² Issues of federalism are in any case left aside here. Cities and subnational authorities are public actors and in terms of the categories of public international law, State organs whose conduct may, for instance, bring about State responsibility for wrongful conduct under the rule embodied in Article 4 of the Articles on State Responsibility.²³ Yet, cities and other subnational authorities are specific actors due to their quality as State organs on the one hand and their turn towards developing an independent role for themselves on the other. Their remaining quality as State organs should prevent filing cities into the rubric of 'non-State actors'.²⁴ Cities and their networks blur considerably the established boundary between public and private actors in the global climate change regime.²⁵

2 | CLIMATE CHANGE ACTIVITIES OF CITIES

Let us now take a closer look at the climate change activities of cities. In this section, I first lay out some elements of the practice of cities in that regard before turning to the narrative with which cities have established themselves as globally relevant actors.

2.1 | The practice

As already indicated in the introduction, a multitude of different initiatives of cities exist in the climate change context.²⁶ The same is true with respect to the varying forms with which cities can be engaged in the fight against global climate change and its consequences. Of course, cities can 'do something' against climate change purely on the local level. Accordingly, climate-change-related activities by cities do not presuppose action which is transnational or global in nature.²⁷ Yet, we can observe how cities have formed a number of networks which transcend national boundaries.

Following a classification from the political science literature on cities, two different generations of climate change networks can be distinguished.²⁸ The first generation is represented by initiatives such as ICLEI – Local Governments for Sustainability. ICLEI is a

¹⁶The political science literature is also just beginning to catch up with this development; see I Klaus and M Acuto, 'Introduction' (2018) 12 *New Global Studies* 1, 4.

¹⁷See also A Liu, 'Cities Have Their Limits' (City Lab, 10 September 2018) <<https://www.citylab.com/perspective/2018/09/cities-have-their-limits/569716/>>.

¹⁸On State pre-emption laws, see L Riverstone-Newell, 'The Rise of State Preemption Laws in Response to Local Policy Innovation' (2017) 47 *Publius* 403 (who notes that the election of President Trump at the federal level also prompted a surge of state pre-emption laws in some respects).

¹⁹Curtis (n 11) 83.

²⁰On the legal issues in the US legal system see further Riverstone-Newell (n 18) 413–415; C Kwon and M Roy, 'Local Action, National Impact: Standing Up for Sanctuary Cities' (2018) *The Yale Law Journal Forum* 1 (20 January 2018).

²¹See also the attempts at definition in 'Role of Local Government in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council Advisory Committee' UN Doc A/HRC/30/49 (2015) paras 8–16.

²²M Finck, *Subnational Authorities in EU Law* (Oxford University Press 2017) 1.

²³Articles on the Responsibility of States for Internationally Wrongful Acts, adopted 2001 by the International Law Commission, reprinted in J Crawford (ed), *The International Law Commission's Articles on State Responsibility* (Cambridge University Press 2002).

²⁴Yet see Bäckstrand et al (n 15) 564, who maintain that the overall and very broad category of non-State actors in this context might still fulfil a useful heuristic function.

²⁵For a similar assessment, see J Lin, *Governing Climate Change: Global Cities and Transnational Lawmaking* (Cambridge University Press 2018) 134.

²⁶For a broad overview, see MJ Hoffmann, *Climate Governance at the Crossroads: Experimenting with a Global Response after Kyoto* (Oxford University Press 2011).

²⁷For a study on such local dimensions in the German context, see W Kahl and M Schmidtchen, *Kommunaler Klimaschutz durch erneuerbare Energien* (Mohr Siebeck 2013).

²⁸D Gordon and M Acuto, 'If Cities are the Solution, What are the Problems? The Promise and Perils of Urban Climate Leadership' in C Johnson, N Toly and H Schroeder (eds), *The Urban Climate Challenge: Rethinking the Role of Cities in the Global Climate Regime* (Routledge 2015) 63, 64–67; a similar classification is implicit to Lin (n 25) 109.

network of today more than 1,500 cities, towns and regions. Its creation in the early 1990s coincided with the 1992 Rio Declaration on Environment and Development.²⁹ Membership in ICLEI became instrumental for the adoption of local Agenda 21 documents – something that was encouraged by the 1992 Declaration. ICLEI describes itself as ‘the leading global network’ of cities and towns, committed to ‘building a sustainable future’.³⁰ From the wide range of ICLEI activities, the Cities for Climate Protection programme (CCP, no longer in existence) was probably the most well-known example. The key idea behind the CCP was to trigger the development of local climate change plans which would be built around five milestones cities would strive to arrive at.

ICLEI is an organization which every city, town or region so inclined can join. This has helped to create the wide membership basis that ICLEI has today. It has also led to doubts about the efficiency and stringency of the commitments of the ICLEI membership, however.³¹

In this respect, second-generation networks wish to distinguish themselves.³² The prime example for such a second-generation network is the C40 – Climate Leadership Forum. It was established in 2009 under the leadership of the then London Mayor Ken Livingstone. Originally under the name of C20, its underlying idea was to replicate the club model of the G7/G8 and G20 as forums for an informal, yet particularly efficient way of steering global governance.³³ Membership in the new network would thus be limited to either megacities with particular clout or to so-called ‘innovator cities’ of a smaller size that are, however, recognized as leaders in the climate change field. Today, C40 has grown to encompass more than 90 cities.

The governance structure of C40 is highly flexible and informal. A steering committee of member cities exists, in part responsible for the election of the C40 chair (currently Anne Hidalgo, the Mayor of Paris). Binding commitments are not among the aspirations of C40. Rather, it is the goal to generate ‘best practices’ and to provide for awareness among city leaders how they can use their powers in order to address climate change. Studies commissioned by C40 nudge member cities gently towards cooperating with the private sector on various issues. By pooling their buying power, for instance, cities would be able to obtain more favourable conditions when acquiring new technology in order to create smart and sustainable urban environments. In addition, several member cities of C40 form issue-specific networks amongst themselves, such as Connecting

Delta Cities: Resilient Cities and Climate Adaptation Strategies.³⁴ Accordingly, C40 can be understood as a network of networks, further underlining its highly flexible governance structure.

Close cooperation with the private sector is built into the DNA of C40.³⁵ The Secretariat of C40 is organized in cooperation with the Clinton Climate Initiative (CCI) of former US President Clinton. Especially since the chairmanship of New York City Mayor Michael Bloomberg (who later became UN Special Envoy for Cities and Climate Change), C40 has operated with a corporatist mind-set, emphasizing the centrality of cooperation with actors from the business community.

C40 has also sought to establish close links with international organizations. One example is the cooperation with the World Bank which is based on a Memorandum of Understanding (MoU) entered into on 1 June 2011.³⁶ The aims of the cooperation include the promotion of a consistent approach to city climate action plans and strategies, to advance standardized reporting frameworks for city greenhouse gas emissions, to identify frameworks for climate finance for cities and to enhance knowledge-sharing and capacity-building for climate action in cities.³⁷

The MoU portrays a certain ambivalence with respect to the reach of this cooperation. Most provisions relate to cooperation between the World Bank, C40 and C40 cities. Yet, in some parts of the MoU, an ambition shines through to set standards and techniques which might find application beyond this circle. This raises a question about lawmaking dynamics. To what extent do C40 cities gain influence over the formulation of global standards which the World Bank might then rely on in its dealings with other local authorities? The MoU is of course not intended to create legally binding obligations.³⁸ But it is a noteworthy case in point where the informal network of C40 has managed to capture the imagination of more established actors that cities are now a force to be reckoned with. In this spirit, the MoU departs from the assumption that ‘cities are at the forefront of the challenges of mitigating and adapting to climate change’.³⁹ This understanding coincides with a broader turn of international institutions such as the World Bank to focus on direct interactions with the local level – a move which blends into an ideology of decentralization and competitiveness and which eschews the State and its allegedly dysfunctional elites as unpromising (or

²⁹Rio Declaration on Environment and Development in ‘Report of the United Nations Conference on Environment and Development’ UN Doc A/CONF.151/26 (vol I) (12 August 1992) Annex.

³⁰<<http://www.iclei.org/about/who-is-iclei/faq.html>>.

³¹Gordon and Acuto (n 28) 66–69.

³²See also S Bernstein and M Hoffmann, ‘The Politics of Decarbonization and the Catalytic Impact of Subnational Climate Experiments’ (2018) 51 Policy Sciences 189, 195 (indicating that C40 was created in response to lacuna of existing networks such as ICLEI).

³³It is not uncontroversial what a club model can bring to climate change governance; see for a critical view on ‘minilateral’ coalitions between states R Falkner, ‘A Minilateral Solution for Global Climate Change? On Bargaining Efficiency, Club Benefits, and International Legitimacy’ (2016) 14:1 Perspectives on Politics 87.

³⁴Lin (n 25) 118–119.

³⁵See also *ibid* 113–115.

³⁶Memorandum of Understanding Between International Bank for Reconstruction and Development, International Development Association, International Finance Corporation and the C40 Cities Climate Leadership Group on Cooperation Relating to Climate Action in Cities’ (1 June 2011), public disclosure authorized, <<http://documents.worldbank.org>>; the disclosure application was submitted by Michael Riegner of Humboldt University Berlin; see further M Riegner, ‘International Institutions and the City: Towards a Comparative Law of Global Governance’ in HP Aust and A du Plessis (eds), *The Globalization of Urban Governance: Legal Perspectives on Sustainable Development Goal 11* (Routledge 2019) 38, 46.

³⁷For an analysis of this MoU, see also Lin (n 25) 122–125.

³⁸For a classic treatment of the statement of MoUs in international law, see A Aust, ‘The Theory and Practice of Informal International Instruments’ (1986) 35 International and Comparative Law Quarterly 787.

³⁹‘Memorandum of Understanding’ (n 36).

rather: compromised) sites for genuine development.⁴⁰ Although this focus on development might be seen to have implications primarily for cities in the 'Global South', it is arguably illustrative of a broader turn towards the globalization of urban governance with repercussions beyond the specific context of development.

2.2 | The narrative

This brings us to the construction of the narrative, that is, the question of why cities are deemed to be important actors in the global climate change regime today. This narrative has a lot to do with the often-repeated assertions that large cities are responsible for a significant amount of global greenhouse gas emissions. The C40 cities would account for approximately 25 percent of the global gross domestic product (GDP).⁴¹ This contribution to the causes of climate change would, so the argument goes, also result in specific responsibilities. Cities more generally would be responsible for 70 percent of global greenhouse gas emissions.⁴² This figure is only likely to grow if the current trend of world urbanization continues. Already today more than 50 percent of the world population is living in urban areas prompting scholars and policymakers to affirm that we are living in an 'urban age'.⁴³

The self-representation of C40 focuses on portraying its members as spearheading progress in the fight against climate change. For quite some time, it has conveyed the image of States failing their responsibilities to address the challenge of climate change. 'States talk, cities act' was meant to express that cities had no other choice but to take it upon themselves to address the global challenge of climate change.⁴⁴ The resolve of C40 is to portray urban leadership – through a network which connects the most ambitious cities, the climate leaders, so to speak. This is also one more marked difference between C40 and the first-generation networks such as ICLEI. The latter would argue that the vast membership of ICLEI is in and of itself a sign of urban leadership. It would not see a need to differentiate between frontrunners and other city actors, however. The ambition of the C40 club is to only assemble the leaders in the first place.

According to the C40 rhetoric, cities thus had to fill a governance gap. They would be particularly well-positioned for this task: cities would generally be more progressive – as opposed to structurally more conservative-minded backwaters. Cities would have some other qualities to offer. Their officials would be characterized by a pragmatic problem-solving mind-set. Mayors would focus on

getting things done – and not on getting bogged down in political infights. Furthermore, cities would lack the jealous urge of nation States to preserve their sovereignty. Accordingly, cities would by definition be open for more cooperation and could tackle more effectively a global problem on which states fail to deliver. And cities would also enjoy a particular form of democratic legitimacy. They would be the level of the State closest to the people.⁴⁵

This form of reasoning has been prominent in climate change governance, especially spearheaded by C40. At the same time, it is not limited to this context. This is shown by the works of authors such as Richard Florida, Edward Glaeser or the late Benjamin Barber, who have helped popularize a certain genre of literature which makes the case for a new form of localism not just in world politics, but for society more generally. Their arguments overlook certain counterarguments and have an overreaching tendency to dismiss the State as an actor on its way out – an argument not many would make in general despite the widespread disdain for States among many writers in international law and political science.⁴⁶ This narrative runs into a number of internal contradictions. On the one hand, cities aim to be 'the new kids on the block', thus distancing themselves from the allegedly tired and old inter-State system of diplomacy with its focus on States and State-driven international organizations. On the other hand, cities and their networks aspire to get recognition from these very same actors in order to bolster their standing on the international level.⁴⁷ This can be seen from the way in which cities and their networks build up presence at international summits and conferences with side events.⁴⁸ Or contrast, for instance, the reliance on managerial problem-solving on the one hand and the reliance on the 'closest to the people' argument. How does this particular form of grassroots legitimacy relate to the managerial side?⁴⁹

3 | THE ROLE OF CITIES IN THE GLOBAL CLIMATE CHANGE REGIME

The need to rethink the narrative of 'States talking, cities acting' is hence first and foremost a consequence of the successful conclusion of the negotiation process for a new and legally binding agreement in the UN climate change regime, the Paris Agreement that was concluded in 2015 and that entered into force just one year later in 2016. The entry into force of the Paris Agreement invites us to reflect on how cities and their networks are already accommodated in the global climate change regime.

⁴⁰Lin (n 25) 123, 125; on the general trend towards engaging with the local level, see J Wolfensohn, 'The World Bank and Global City Regions' in AJ Scott (ed), *Global City-regions. Trends, Theory, Policy* (Oxford University Press 2001) 44, 46–47; for a critical view, see L Eslava, *Local Space, Global Life – The Everyday Operation of International Law and Development* (Cambridge University Press 2015).

⁴¹<<http://www.c40.org/about>>.

⁴²See also Acuto (n 13) 124.

⁴³See <<http://www.un.org/en/development/desa/news/population/world-urbanization-prospects-2014.html>>; Lin (n 25) 43; for critical remarks on the methodology and implications of these statistics, see N Brenner and C Schmid, 'The "Urban Age" in Question' (2014) 38 *International Journal of Urban and Regional Research* 731.

⁴⁴Lin (n 25) 106.

⁴⁵For the whole set of these arguments, see Barber (n 14) 23, 71, 106.

⁴⁶See further Aust (n 8); Klaus and Acuto (n 16) 3; Bäckstrand et al (n 15) 568; for a differentiated argument, see also Finck (n 22) 60.

⁴⁷M Acuto, 'The New Climate Leaders?' (2013) 39 *Review of International Studies* 835, 842.

⁴⁸Lin (n 25) 2.

⁴⁹S Curtis, *Global Cities and Global Order* (Oxford University Press 2016) 119; HP Aust, 'The Good Urban Citizen' in J Hohmann and D Joyce (eds), *International Law's Objects* (Oxford University Press 2018) 225.

3.1 | The global climate change regime after Paris

The term 'global climate change regime' refers to the whole set of rules and institutional arrangements which govern and regulate the responses of States and other actors to the challenge of climate change.⁵⁰ The core of the regime is the UNFCCC,⁵¹ a virtually universally binding agreement. In this context, the Kyoto Protocol⁵² and, most recently, the Paris Agreement were adopted.⁵³ The UNFCCC, Kyoto Protocol and Paris Agreement are all binding legal agreements, yet they all have a highly flexible structure of different types of obligations.⁵⁴ The UN climate change regime is also very much defined by the decisions made by the Conference of the Parties (COP), which are not all binding in nature, but which play an important role in fleshing out the details of the implementation of the various agreements.⁵⁵ Beyond the UN parts, there is certainly more to the global climate change regime.

The Paris Agreement includes some references to the role of cities and other subnational authorities but is not as explicit on this as some anticipated before its adoption. There was hope in some quarters that the Agreement would signal a more forceful commitment of State parties to the UNFCCC that cities and other subnational authorities have a role to play in addressing climate change.⁵⁶ This went so far as to ventilate options that cities could sign the Agreement or at least report officially their mitigation measures.⁵⁷ This move was challenged in the negotiation process from Lima to Paris by both developed and developing states for a mix of different reasons. Some, such as Sudan were concerned about potential infringements of their national sovereignty. Others, such as Venezuela, were hostile to bolstering the legitimacy of non-State actors such as transnational corporations.⁵⁸ Incidentally, this shows

one of the pitfalls of lumping together different forms of non-Party stakeholders in one single group.⁵⁹

Not much of that agenda made its way into the Agreement aside from a hortatory statement in the preamble according to which the State parties recognize 'the importance of the engagements of all levels of and various actors, in accordance with the national legislations of Parties, in addressing climate change'.⁶⁰ The subnational or local dimension of climate change shines through a number of other provisions of the Agreement, for instance in Article 7(2), where it is acknowledged that adaptation is a global challenge faced by all with 'local, subnational, national, regional and international dimensions'.⁶¹ The subnational and local levels also get a mention in the provision on capacity-building.⁶²

So even if the Paris Agreement did not lead to a formal inclusion of cities and other subnational authorities in the climate change regime, it is clearly not a setback for the attempts of cities to position themselves in the global climate change regime.⁶³ More forthcoming is the COP decision by which the Agreement was adopted.⁶⁴ In its preamble, the State parties affirm that they wish to 'uphold and promote regional and international cooperation ... by all Parties and non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples'.⁶⁵

In its operative part, the 'efforts of all non-Party stakeholders', including cities and other subnational authorities, are welcomed.⁶⁶ These non-Party stakeholders are then invited 'to scale-up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change'.⁶⁷ In order to make these steps meaningful, the decision refers also to the 'Non-State Actor Zone for Climate Action' (NAZCA), which provides a platform for the registration of a wide variety of commitments by different non-Party stakeholders.⁶⁸

In sum, the global climate change regime seems to keep its welcoming, yet somewhat distant, stance towards subnational efforts to address climate change. Cities and their networks remain at the edges of the system which provides some in-roads such as NAZCA or the 'Marrakech Partnership for Global Climate Action', which was

⁵⁰See D Bodansky, J Brunnée and L Rajamani, *International Climate Change Law* (Oxford University Press 2017) 10.

⁵¹United Nations Framework Convention on Climate Change (9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

⁵²Kyoto Protocol to the United Nations Framework Convention on Climate Change (11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

⁵³See further R Bodle and S Oberthür, 'Legal Form of the Paris Agreement and Nature of its Obligations' in D Klein et al (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press 2017) 91, 92.

⁵⁴Bodansky et al (n 50) 17–18; see also Bäckstrand et al (n 15) 567 (suggesting that the Paris Agreement strikes a 'middle position between bottom-up polycentricity and top-down targets-and-timetables by combining intergovernmental and transnational action').

⁵⁵See generally on the legal status of COP decisions J Brunnée, 'COPing with Consent: Law-making under Multilateral Environmental Agreements' (2002) 15 *Leiden Journal of International Law* 1.

⁵⁶D Esty, 'Bottom-up Climate Fix' (New York Times, 21 September 2014); see also the more recent contribution D Esty and P Boyd, 'To Move Paris Forward, Bring Cities and Companies Onboard' (Yale Environment 360, 20 March 2018); see also S Chan et al, 'Reinvigorating International Climate Policy: A Comprehensive Framework for Effective Nonstate Action' (2015) 6 *Global Policy* 466 (calling for some form of recognition of non-State and subnational actors without prejudice to the legal form that this should take).

⁵⁷See also the remarks by then US Secretary of State John Kerry in J Warrick, 'Kerry, on Eve of Arctic Summit, Calls for Citizen Pressure on Climate Change' (Washington Post, 23 April 2015).

⁵⁸T Hale, "'All Hands on Deck': The Paris Agreement and Nonstate Climate Action' (2016) 16 *Global Environmental Politics* 11, 16.

⁵⁹See further on this issue M Betsill and H Bulkeley, 'Cities and the Multilevel Governance of Climate Change' (2006) 12 *Global Governance* 141, 148; Aust (n 11) 43.

⁶⁰See also H van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement' (2016) 6 *Climate Law* 91.

⁶¹Paris Agreement (n 2) art 7(2).

⁶²*ibid* art 11(2).

⁶³For a positive assessment, see also Hale (n 58) 13.

⁶⁴UNFCCC 'Decision 1/CP.21, Adoption of the Paris Agreement' UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016); see also Bäckstrand et al (n 15) 569.

⁶⁵Decision 1/CP.21 (n 64) preamble.

⁶⁶*ibid* para 133.

⁶⁷*ibid* para 134.

⁶⁸See on the pre-history of NAZCA and its establishment in the context of the 'Lima-Paris Action Agenda' (LPAA), A Higham, 'Pre-2020 Climate Action and the Emergent Role of Non-Party Stakeholders' in Klein et al (n 53) 43, 46–47.

launched at COP 22 in Marrakech in 2016.⁶⁹ Formal admission to the system is still not seriously considered, however. It is also possibly not what cities and their networks aspire to, as formal inclusion might bereave them of some of the possibilities for a flexible engagement with the global climate change regime that they enjoy under the current state of affairs. Viewed together, the practice of cities and their networks on the one hand and the cautious embrace of that development by the Paris Agreement on the other can be seen as two connected processes: a bottom-up process of cities stepping up at the international level and a form of top-down recognition by the inter-State system.

In this respect, the formulation in the preamble of the Paris Agreement is telling, especially in the light of previous historical experiences. The necessary accordance with 'national legislation' signals an unwillingness of States to let cities off the hook too easily. Their activities are welcomed, but only under the condition that States retain the option to control the transnational activities of their subnational components. This mirrors, coincidentally, an early episode in the history of international activities of cities which took place in the interwar era. Formed in 1913, the *Union internationale des villes* attempted to obtain a kind of formal recognition by the League of Nations.⁷⁰ After a motion to this effect was introduced into the Assembly by Cuba – at the time governed under very heavy influence of the United States – States were supportive at first, before backing down due to concerns about national sovereignty being undermined by international cooperation of cities and local governments. A resolution was finally adopted in 1925, stating that intermunicipal cooperation would be welcomed – but only within the boundaries and confines of State sovereignty.⁷¹ In this respect, little has changed since then.

Yet, in assessing to what extent cities now form part of the global climate change regime – and also its inner core, the UNFCCC system – it should be kept in mind what three leading experts on international climate change law have recently formulated. This field of law has steadily evolved, leading to 'considerable innovation in developing legal instruments and provisions of varying degrees of normative force, thereby blurring the boundaries between law and non-law'.⁷² Arguably this general characteristic of climate change law explains also why cities and their global activities can be part of the global climate change regime, even in the absence of more traditional forms of recognition in international law. What is binding and non-binding in the climate change regime is itself a tricky question. This ambiguity serves as an enabler. It allows new actors and novel forms of cooperation to step inside and *claim* that they are part of this field of global governance. The reluctant posture by the inter-State system does not preclude this as States are acknowledging

time and again that they need the support of non-Party stakeholders to successfully implement the Paris Agreement.

3.2 | The normative environment for cities in climate change governance

Just as the climate change regime itself is complex and multifaceted, it is not possible to assign cities one clear role in that regime. Some view the climate change regime as a case study for fragmentation.⁷³ The UNFCCC and the related parts of the UN regime would not be able to provide for coherence and unity in what some consider to be a messy and unordered affair.⁷⁴ Others view this state of affairs in a more positive light.⁷⁵ According to that view, the various elements of the climate change regime testify to the ability of today's global governance processes to allow for experimentation, bottom-up processes and polycentricity.⁷⁶

Due to this polycentricity, cities find several entry points into the regime. At the same time, there are other developments which bolster the standing of cities in this regard. A case in point are the UN Sustainable Development Goals (SDGs), adopted also at the end of 2015 by the UN General Assembly.⁷⁷ Their relationship with the Paris Agreement has already been the subject of some debate.⁷⁸ SDG 13 sets forth a climate-change-related goal. In addition, SDG 11 features a separate goal which relates to cities. This latter goal is special insofar as it is the only actor-specific goal among the SDGs.⁷⁹ According to SDG 11, cities are to become 'inclusive, safe, resilient and sustainable' by 2030. The Paris Agreement and the SDGs can feed upon each other in different fruitful ways. The Agreement takes note of the SDGs and recognizes the idea of sustainable development repeatedly.⁸⁰ In more concrete terms, a number of cross-cutting issues can be identified. For instance, the sub-goal of resilience in SDG 11 speaks to aspects of adaptation in the climate change context. Different sub-goals of SDG 11 relate to mitigation and

⁷³See further KW Abbott, 'Strengthening the Transnational Regime Complex for Climate Change' (2014) 3 *Transnational Environmental Law* 57.

⁷⁴H van Asselt, F Sindico and MA Mehling, 'Global Climate Change and the Fragmentation of International Law' (2008) 30 *Law & Policy* 423, 440; Bäckstrand et al (n 15) 563.

⁷⁵For views emphasizing the multi-level character of the regime: Bodansky et al (n 50) 259; O Quirico, 'Disentangling Climate Change Governance' (2012) 21 *Review of European, Comparative and International Environmental Law* 92; more critical S Boysen, 'Grundfragen des transnationalen Klimaschutzrechts' (2012) 50 *Archive des Völkerrechts* 377 (suggesting that typical dynamics of multi-level systems not working).

⁷⁶E Ostrom, 'A Polycentric Approach for Coping with Climate Change' (World Bank 2009).

⁷⁷UNGA 'Transforming Our World: The 2030 Agenda for Sustainable Development' UN Doc A/RES/70/1 (21 October 2015); for a broader analysis of the SDGs, see the contributions in D French and L Kotzé (eds), *Sustainable Development Goals: Law, Theory, Implementation* (Edward Elgar 2018).

⁷⁸See M Brus, 'Soft Law in Public International Law: A Pragmatic or Principled Approach? Comparing the Sustainable Development Goals and the Paris Agreement' (2017) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2945942>; F Biermann and N Kanie, 'Conclusion: Key Challenges for Global Governance through Goals' in F Biermann and N Kanie (eds), *Governing through Goals – Sustainable Development Goals as Governance Innovation* (MIT Press 2017) 295, 296; R Lyster, 'Climate Justice, Adaptation and the Paris Agreement: A Recipe for Disaster?' (2017) 26 *Environmental Politics* 438, 439.

⁷⁹HP Aust and A du Plessis, 'Good Urban Governance as a Global Aspiration: On the Potentials and Limits of Sustainable Development Goal 11?' in French and Kotzé (n 77) 201.

⁸⁰See further M Pía Carazo and D Klein, 'Implications for Public International Law' in Klein et al (n 53) 389, 408–409.

⁶⁹Available at <https://unfccc.int/files/paris_agreement/application/pdf/marrakech_partner_ship_for_global_climate_action.pdf>.

⁷⁰See further PY Saunier, 'Sketches from the Urban Internationale, 1910–1950: Voluntary Associations, International Institutions and US Philanthropic Foundations' (2001) 25 *International Journal of Urban and Regional Research* 380; Aust (n 11) 36–47.

⁷¹Reprinted in (1925) 6 *Journal de l'Assemblée de la Société des Nations* 231.

⁷²Bodansky et al (n 50) 17–18; see also Lin (n 25) 179.

adaption measures, such as a call to provide for sustainable public transport structures, the need for sustainable urban planning, the goal to 'reduce the adverse per capita environmental impact of cities' and the sub-goal to provide for access to safe, inclusive and accessible, green and public spaces.

SDG 11 does not speak directly to the international or transnational engagement of cities. It does not invite them specifically to network in order to reach their goals. But it is emblematic of a process through which local governance becomes influenced by international norms and preferences. SDG 11 is of course not the starting point for this development, which stretches back at least to the 1992 Rio Declaration and its call for the adoption of 'Local Agenda 21s'.⁸¹ Yet, the adoption of SDG 11 is a most powerful indication of how far this call for the internationalization of local governance has come. Local governance is no longer just an issue to be determined by domestic law.⁸² Instead, cities and local governments find themselves increasingly exposed to international norms. In our context, SDG 11 is a particularly relevant marker as it expresses the necessity to provide for sustainable urban governance. What is more, the singling out of cities as the one type of actor which are the subject of a specific goal bolsters their legitimacy as international actors. In passing, it should be noted that SDG 11 is not the only relevant SDG for cities and subnational authorities. A whole range of other SDGs will be important for local governance issues, specifically SDG 17 with its focus on strengthening the means of implementation for the SDGs as a whole can be a reference point for sustainable urban governance.

Similar observations apply with respect to the 'New Urban Agenda', adopted at the third UN Habitat conference in Quito in 2016.⁸³ In this verbose and in some places somewhat redundant document, sustainability figures as an overarching goal for the local level.⁸⁴ The Paris Agreement is referenced at various points.⁸⁵ Cooperation among local governments is included in the proposed governance framework to realize the goals of the New Urban Agenda.⁸⁶

The broader question of regime efficiency and fragmentation still looms. Linking the efforts of cities and their networks with the global climate change regime in a more formal way might remedy the deficiencies of a fragmented regime, provide for more coordination and thus yield better outputs. Conversely, it might also stymie the bottom-up, experimentalist drive on which city networks rely in the field of climate governance.

For instance, it is an ongoing discussion how effective climate change mitigation measures by cities and other subnational

authorities are in reality. First ambitious studies undertaken in this context at least raise question marks about the impact of city networks.⁸⁷ One such review, for instance, departs from the assumption that transnational climate networks would be a feasible addition and possible substitute for mitigation efforts by States if such networks included members from regions with high emissions or emission growth rates, included mechanisms to avoid for double counting of emission cuts, set ambitious targets going beyond national objectives and would include a meaningful monitoring mechanism to report and verify commitments.⁸⁸ Analysing a number of different networks – including also C40 – the authors come to the sobering conclusion that on all four counts the networks portray considerable deficiencies.⁸⁹ At the very least, these findings cast a shadow of doubt over the narrative 'States talk, cities act'. It may be, after all, that cities are also good at talking.

The Non-State Actor Zone for Climate Action (NAZCA) portal is certainly a step in the right direction so as to provide for transparency and oversight here.⁹⁰ At the same time, it does not render reporting commitments into formally binding obligations – something that would make participation by cities and subnational authorities much more difficult, especially in the light of the different domestic legal frameworks for the activities of cities and subnational authorities.⁹¹ It has also been argued that some of the problems with respect to reporting and counting are overstated.⁹² According to this view, an overlap between greenhouse gas emission reductions by States and cities could be considered as moot from the perspective of the global climate change regime: either reduction of emissions by cities count as contributions towards parties' nationally determined contributions (NDCs) under the Paris Agreement or – if not – would help to close what is called the 'emissions gap', that is, the delta still existing between the sum of NDCs on the one hand and the efforts necessary to meet the overall goal of the Paris Agreement, that is, to hold the increase in the global average temperature to well below 2°C above pre-industrial levels.⁹³

⁸¹See n 29.

⁸²See also Lin (n 25) 63–64; Frug and Barron (n 6); H Lindemann, *Kommunale Governance* (Mohr Siebeck 2014).

⁸³UNGA 'New Urban Agenda' UN Doc A/RES/71/256 (25 January 2017) Annex.

⁸⁴ibid paras 6, 9, 83, 127, 128, 150, 164, 168.

⁸⁵ibid paras 6, 79.

⁸⁶ibid, most clearly in para 149; see also paras 87, 96, 126, 146.

⁸⁷A Hsu et al, 'Track Climate Pledges of Cities and Companies' (2016) 532 *Nature* 303; JS Bansard, PH Pattberg and O Widerberg, 'Cities to the Rescue? Assessing the Performance of Transnational Municipal Networks in Global Climate Governance' (2017) 17 *International Environmental Agreements: Politics, Law and Economics* 229, 233; KW Abbott, 'Orchestrating Experimentation in Non-State Environmental Commitments' (2017) 26:4 *Environmental Politics* 738.

⁸⁸Bansard et al (n 87) 230.

⁸⁹ibid 242.

⁹⁰Hsu et al (n 87) 304–306.

⁹¹See also Setzer (n 8) 327.

⁹²Bernstein and Hoffmann (n 32) 190.

⁹³Hale (n 58) 20; Higham (n 68) 43. This debate can also be framed in terms of an alignment between the different levels of climate governance; see A Hsu, AJ Weinfurter and K Xu, 'Aligning Subnational Climate Actions for the New Post-Paris Climate Regime' (2017) 142 *Climatic Change* 419, 424–425. See also UNEP, *Emissions Gap Report 2017* (UNEP 2016) <<https://www.unenvironment.org/resources/emissions-gap-report-2017>>.

4 | CONCLUSION AND OUTLOOK: CITIES AND THE FUTURE OF GLOBAL ORDER

We have seen that cities have successfully established themselves as relevant actors in the global climate change regime. Cities and other subnational authorities now form an important part of the global climate change regime. With the entry into force of the Paris Agreement we may not have seen a transnational turn of the climate change regime as such. Some have instead gone so far as to posit that the Paris Agreement can be read as a 'return of the state'.⁹⁴ This is certainly worthwhile to reflect upon insofar as the very fact of the conclusion and entry into force of this international agreement has robbed cities and their networks of a central element of their narrative: no longer can it be argued that the inter-State system is dysfunctional to the extent that a legally binding agreement would be illusory to achieve in the first place. But the importance of the subnational level for this part of global governance can no longer be denied. At the very least, cities and other subnational authorities are important helpers for States to fix the wicked problem of climate change. In addition, it is also far from clear how the fortunes of the Paris Agreement will evolve in the foreseeable future. Not just the announced withdrawal of the United States from the Agreement, but also a more pervasive sense of 'government backsliding' underline that it is far from clear whether the Paris Agreement will set the planet on a path towards a sustainable future.⁹⁵

Right now, we find ourselves at a critical juncture with respect to how this process will continue – both in political and legal terms. The alleged rise of the city has been viewed by many as a consequence of processes of globalization. To the degree that nation States would lose importance in the context of global governance, a window of opportunity opened up for new actors to push in. The last couple of years has seen – at least on the level of rhetoric – a move towards reasserting sovereignty and statist perspectives on the construction of international law and the global order. In some jurisdictions, this has gone hand in hand with the rise of populist movements who criticize internationalist-minded elites. 'Taking back control' is a slogan that is usually directed towards the national political level.⁹⁶

The rise of cities as global actors has followed upon the heels of a debate triggered initially by Saskia Sassen with her seminal 1991 book on *The Global City*.⁹⁷ Part of her analysis also concerned the detachment of a certain group of professionals in the business and

finance sector from the traditional constraints of citizenship. Although this diagnosis was certainly never representative of the whole picture – as it always only affected a small group of a global elite – this resonates with the – unfortunate – characterization of 'citizens of the world' as 'citizens of nowhere' in parts of the political discourse and a larger shift towards distrust against liberal and progressive elites – who are supposedly concentrated in the more urbanized parts of countries.⁹⁸ This was echoed in the announcement by President Trump, in which he emphasized his loyalty to the citizens of Pittsburgh, not of Paris – provoking the angry rebuke by the Mayor of Pittsburgh.⁹⁹ The reaction by US cities and local governments shows that the pendulum may well swing back – situating US climate change policy not in a move from Paris to Pittsburgh, but potentially back to Paris – yet through another channel which is not the one of traditional inter-State diplomacy. As an aside, it can be noted that French President Emmanuel Macron made a passing remark to this effect when he addressed the US Congress during his State visit in April 2018. Lamenting an absence of US leadership in the climate change regime, he referred to businesses and 'local communities' with whom he would like to work together to 'make our planet great again'.¹⁰⁰ One institutional forum for this attempt is the ongoing attempt to draft a 'Global Pact for the Environment', which has as its most ambitious content the attempt to entrench a human right to an ecologically sound environment.¹⁰¹ A resolution adopted by the UN General Assembly in May 2018 has called for the creation of an open-ended working group to consider the matter further.¹⁰² What is important for our purposes, the current draft includes a provision which refers to the role that non-state actors and subnational entities, 'including civil society, economic actors, cities and regions' will have to play for the implementation of a future Global Pact. While it needs to be awaited whether this agreement will see the light of the day and in which form, it signifies that also some States such as France – the leading political force behind the Pact – have recognized that international law should open up more forcefully than so far to include new actors such as cities and their networks.

Seen from this perspective, the role of cities in the global climate change regime is just one emanation of a broader debate on the future of the international order.¹⁰³ Will the reassertion of State authority take us back to an earlier international order which puts a premium on State consent? Will this mean that the entrenchment of the ideals of the rule of law and human rights will

⁹⁴Bäckstrand et al (n 15) 569.

⁹⁵The formulation 'government backsliding' was reportedly part of the manuscript of UN Secretary-General António Guterres for his Address to the UN General Assembly on 10 September, but not delivered, see correction to 'U.N. Chief Warns of a Dangerous Tipping Point on Climate Change' (New York Times, 11 September 2018).

⁹⁶For a discussion of these trends, see EA Posner, 'Liberal Internationalism and the Populist Backlash' (2017) 49 *Arizona State Law Journal* 795; L Vinjamuri, 'Human Rights Backlash' in S Hopgood, J Snyder and L Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017) 114.

⁹⁷S Sassen, *The Global City* (2nd edn, Princeton University Press 2001).

⁹⁸See also Finck (n 22) 34.

⁹⁹See n 5.

¹⁰⁰Speech by Emmanuel Macron Before the Congress of the United States of America' (25 April 2018) <<http://www.elysee.fr/declarations/article/transcription-du-discours-du-president-de-la-republique-emmanuel-macron-devant-le-congres-des-etats-unis-d-amerique/>>.

¹⁰¹<<http://pactenvironment.org/>>; see further M Young, 'Global Pact for the Environment: Defragging International Law?' (EJIL:Talk!, 29 August 2018) <<https://www.ejiltalk.org/global-pact-for-the-environment-defragging-international-law/#more-16429>>.

¹⁰²UNGA 'Towards a Global Pact for the Environment' UN Doc A/RES/72/277 (10 May 2018).

¹⁰³Curtis (n 11) 83.

matter less in the future? Or will we see an even more fundamental change of the international system – resembling the disorder and chaos of medieval times? The doyen of the English School of International Relations, Hedley Bull, wrote in his *Anarchical Society* to that effect:

*It is familiar that sovereign states today share the stage of world politics with 'other actors' just as in medieval times the state had to share the stage with 'other associations' (to use the medievalists' phrase). If modern states were to come to share their authority over citizens, and their ability to command their loyalties, on the one hand with regional and world authorities, and on the other hand with sub-state authorities, to such an extent that the concept of sovereignty ceased to be applicable, then a neo-medieval form of universal political order might be said to have emerged.*¹⁰⁴

A form of neo-medieval ordering of the world is probably not imminent. Yet, the growing role of cities in global governance – and increasingly also in international law – adds another layer of complexity to our understanding of these fields. This complexity is owed not least to the dual character of cities when they act on the international level. They remain State organs and hence represent to a certain extent their respective State. At the same time, the field of climate change governance exemplifies that cities frequently act globally precisely in order to pursue a policy which sets them apart from their home State. It is time for international law to openly acknowledge this development and accommodate these practices in its fundamental doctrines. As of now, this process has only just begun.

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I am grateful for the excellent feedback I received on this article by two anonymous reviewers, the journal's editor-in-chief as well as from colleagues at seminars and workshops at the Institute of Advanced Sustainability Studies, Potsdam; the Lauterpacht Centre for International Law, University of Cambridge; the University College Roosevelt, Middelburg; Melbourne Law School as well as the Faculty of Law of the North-West University in Potchefstroom.

How to cite this article: Aust HP. The shifting role of cities in the global climate change regime: From Paris to Pittsburgh and back? *RECIEL*. 2019;28:57–66. <https://doi.org/10.1111/reel.12272>

¹⁰⁴H Bull, *The Anarchical Society* (Columbia University Press 1977) 254–255.