

Gotham Fights Back: The Role of U.S. Cities in Advancing Paris Agreement Goals

Tiffany Basciano

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/mjil>

Recommended Citation

Tiffany Basciano, *Gotham Fights Back: The Role of U.S. Cities in Advancing Paris Agreement Goals*, 34 Md. J. Int'l L. 72 (2020).

Available at: <https://digitalcommons.law.umaryland.edu/mjil/vol34/iss1/5>

This Symposium: Articles and Essays is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

Gotham Fights Back: The Role of U.S. Cities in Advancing Paris Agreement Goals

TIFFANY BASCIANO[†]

I. INTRODUCTION

In recent years, U.S. cities experienced the dramatic impact of climate change directly from Hurricane Harvey in Houston¹ to the more recent Hurricane Florence with the epicenter in Wilmington.² Although climate change is often characterized as a global problem, its impacts are localized. Thus, finding solutions is a matter of subnational concern. So, on June 1, 2017, when President Donald J. Trump announced that the United States would withdraw from the Paris Climate Agreement (hereinafter Paris Agreement),³ he poured fuel on an already burning fire among cities and other non-federal

© 2019 Tiffany Basciano

[†] Former Associate Director and Professorial Lecturer, International Law and Organizations Program, Johns Hopkins University – The Paul H. Nitze School of Advanced International Studies (SAIS). I would like to thank SAIS graduate students Anna Berger and Fernanda Canessa for their research assistance and feedback. I would also like to thank the editorial board of the Maryland Journal of International Law for all of their hard work.

1. See, e.g., Henry Fountain, *Scientists Link Hurricane Harvey's Record Rainfall to Climate Change*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/climate/hurricane-harvey-climate-change.html>.

2. See Brandon Miller, *Climate Change is Making Storms like Hurricane Florence Worse*, CNN (Sept. 19, 2018), <https://www.cnn.com/2018/09/19/us/climate-change-hurricane-florence-wxc/index.html>; see also Eric Levenson, *A City-by-City Look at Florence's Rain and Flooding*, CNN (Sept. 17, 2018), <https://www.cnn.com/2018/09/17/us/florence-city-flooding-hurricane/index.html>.

3. Remarks Announcing United States Withdrawal From the United Nations Framework Convention on Climate Change Paris Agreement, 2017 DAILY COMP. PRES. DOC. 373 (June 1, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/>.

2019] THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS 73

actors eager to combat climate change.⁴ Armed with the rallying cry of “We Are Still In,” those actors pledged to continue the fight.⁵

The actions of U.S. cities reflect a greater movement of municipalities and other subnational actors to advance the goals of the Paris Agreement. This movement may challenge traditional ideas of global governance, diplomacy, and norm-creation, but are also structurally necessary to ensure that there is a world left to govern. For U.S. cities, the dynamics are even more complicated in that they are championing an international legal regime without the support of their nation-state. Ultimately, President Trump’s rejection of the global will demonstrated in Paris and seeming condemnation of the planet is not the end of U.S. engagement with the agreement’s goals, but it may be contributing to the transformation of the global political landscape.

The Paris Climate Agreement was an epic achievement with 196 countries coming to a deal in December of 2015.⁶ The primary goal of the agreement is to keep the rise of the global average temperature to well under 2°C of pre-industrial levels and ideally limiting it to 1.5°C.⁷ Towards achieving that goal, each country sets out its voluntary plan to reduce greenhouse gases (“GHGs”) under the nationally determined contribution (“NDC”).⁸ Another crucial feature of the Paris Agreement is climate finance, whereby developed countries provide financial resources to developing countries to both mitigate and adapt to climate change.⁹ Trump’s withdrawal announcement expressed that the United States would cease

4. See, e.g., Hiroko Tabuchi & Henry Fountain, *Bucking Trump, These Cities, States and Companies Commit to Paris Accord*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/american-cities-climate-standards.html>.

5. See Diana Rojas, *#WeAreStillIn: ‘America Will Meet the Paris Agreement Despite Trump,’* ETHICAL CORP. (June 5, 2017), <http://www.ethicalcorp.com/wearestillin-america-will-meet-paris-agreement-despite-trump>.

6. Fiona Harvey, *Paris Climate Change Agreement: The World’s Greatest Diplomatic Success*, THE GUARDIAN (Dec. 14, 2015), <https://www.theguardian.com/environment/2015/dec/13/paris-climate-deal-cop-diplomacy-developing-united-nations>.

7. Paris Agreement to the United Nations Framework Convention on Climate Change, art. 2(1)(a), Apr. 22, 2016, T.I.A.S. No. 16-1104, https://unfccc.int/sites/default/files/english_paris_agreement.pdf [hereinafter Paris Agreement] (“holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change . . .”).

8. *Id.* art. 4(2).

9. *Id.* art. 9(1).

implementation of the NDC along with financial contributions to the UN Green Climate Fund (“GCF”),¹⁰ these moves effectively gut the heart out of US participation in Paris.

As of January 2019, 184 of the 197 signatories have ratified the agreement.¹¹ The United States, which cannot officially withdraw until November 4, 2020, pursuant to Article 28,¹² would be a lone wolf outside of this climate change regime.¹³ The United States’ first NDC, submitted by the Obama administration, aimed to reduce emissions by twenty-six to twenty-eight percent below 2005 levels by 2025.¹⁴ The Obama administration also pledged \$3 billion USD towards climate finance.¹⁵ As the second biggest carbon dioxide emitter in the world¹⁶ with the world’s largest economy,¹⁷ the loss of the United States could prove a major hindrance to the progress of the Paris Agreement. However, many local and global actors are working to avoid such an outcome.

This article will examine the rise of U.S. cities as international actors in the context of combatting climate change with particular attention to their status in global governance and rulemaking power. The structure consists of five parts. Part II will introduce the pragmatic interests of cities in mitigating the impacts of climate

10. Remarks Announcing United States Withdrawal from the United Nations Framework Convention on Climate Change Paris Agreement, *supra* note 3.

11. *Paris Agreement – Status of Ratification*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (last visited Mar. 2, 2019).

12. *See* Paris Agreement, *supra* note 7, art. 28(1)–(2) (outlining the withdrawal procedures wherein parties may formally withdraw in writing three years after entry into force and withdrawal is only be effective a year from the date of written notification). The agreement went into force on November 4, 2016. *See Paris Agreement – Status of Ratification*, *supra* note 11.

13. Lisa Friedman, *Syria Joins Paris Climate Accord, Leaving Only U.S. Opposed*, N.Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/07/climate/syria-joins-paris-agreement.html>.

14. United Nations Framework Convention on Climate Change, NDC Registry (interim), U.S.A. First NDC Submission, at 3, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf> (last visited Jan. 4, 2019).

15. Press Release, White House, United States and Japan Announce \$4.5 Billion in Pledges to Green Climate Fund (GCF) (Nov. 15, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/15/united-states-and-japan-announce-45-billion-pledges-green-climate-fund-g>.

16. Corinne Le Quéré et al., *Global Carbon Budget 2018*, 10 EARTH SYST. SCI. DATA 2141, 2167 (2018), <https://www.earth-syst-sci-data.net/10/2141/2018/essd-10-2141-2018.pdf>.

17. Rob Smith, *The World’s Biggest Economies in 2018*, WORLD ECON. F. (Apr. 18, 2018), <https://www.weforum.org/agenda/2018/04/the-worlds-biggest-economies-in-2018/>.

change. Part III will discuss select actions involving U.S. cities, including the ever-influential “global city”¹⁸ of New York, at the international or transnational level. Part IV will analyze what these actions may mean for the Westphalian system of nation-states and the future of international law. Finally, Part V will discuss the practical challenges that cities face in fulfilling U.S. commitments under the Paris Agreement.

II. CITIES IN THE AGE OF CLIMATE CHANGE

Cities are the most significant actors in the fight against climate change and managing its impacts. Most of the world’s population calls cities home.¹⁹ Located near coastlines, the vast majority of cities are inherently prone to flood risks.²⁰ Moreover, cities generate much of the world’s economic activity with over eighty percent of the gross domestic product (“GDP”).²¹ Geographic vulnerabilities, dense populations, and bustling economic activity raise the stakes for cities in the climate change debate.²² One need look no further than the death, destruction, and disruption caused by Hurricane Sandy to New York City in 2012 to see the widespread impact that natural disasters can have on a city.²³ Climate change can exacerbate these disasters. As such, local governments have a major interest in curbing climate change to protect their infrastructure, economy, and inhabitants.

Cities are not only the most vulnerable to climate change, but they are also best situated to combat it. Currently, cities are responsible for the bulk of the world’s energy consumption and seventy percent of carbon dioxide emissions.²⁴ With such high

18. *See generally* SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (1991) (introducing the concept of a global city).

19. UNITED NATIONS ENVIRONMENT PROGRAMME, *RESILIENCE AND RESOURCE EFFICIENCY IN CITIES 4* (2017), https://wedocs.unep.org/bitstream/handle/20.500.11822/20629/Resilience_resource_efficiency_cities.pdf?sequence=1&isAllowed=y [hereinafter UNEP].

20. Nandan Sharalaya, *How World Cities Moving Forward on Climate Change Leave the US President Behind*, *THE CONVERSATION* (June 15, 2017), <https://theconversation.com/how-world-cities-moving-forward-on-climate-change-leave-the-us-president-behind-79279>.

21. UNEP, *supra* note 19, at 4.

22. *See id.*

23. *See generally* N.Y.C., *SANDY AND ITS IMPACTS, A STRONGER, MORE RESILIENT NEW YORK* (2013), https://www1.nyc.gov/assets/sirr/downloads/pdf/Ch_1_SandyImpacts_FINAL_singles.pdf.

24. *Why Cities?*, C40 CITIES, https://www.c40.org/why_cities (last visited Mar. 3, 2019).

percentages in energy consumption and emissions, mitigation efforts within city limits would have a significant impact, making local-level action vital to realizing the Paris Agreement goals.

After all of the recent weather-related disasters, city-dwellers are invariably more aware that climate change is not just a subject of high-level discussions by diplomats in exotic locales, but an issue that in a painfully literal way comes into their backyard.²⁵ Mayors are closer to the people and their concerns, as well as more receptive to any related pressure from the electorate.²⁶ When it comes to delivering on policy to the people, “[r]eal progress does not emerge from this seemingly endless global negotiation that lacks tangible outcomes, but from the concrete actions of local implementation.”²⁷ In the United States, where climate change is needlessly politicized at the national level,²⁸ it is mayors who are behaving more pragmatically and in the public interest.²⁹

Given all of the common vulnerabilities, responsibilities, and features of cities, it is unsurprising that city-to-city diplomacy is prospering in the fight against climate change. Cities have been engaging in international consortiums, like the C40 Cities Climate Leadership Group (“C40”),³⁰ to coordinate, learn, and innovate.³¹ This cooperation is indispensable moving forward, as many of the world’s largest projected cities of tomorrow, in Africa and Asia, are going to need support in combating climate change.³²

25. See Francesco Causone, *Climate Change: Unleashing the Geopolitical Power of Cities*, ISTITUTE PER GLI STUDI DI POLITICA INTERNAZIONALE (Nov. 6, 2018), <https://www.ispionline.it/it/publicazione/climate-change-unleashing-geopolitical-power-cities-21556>.

26. See *id.*

27. Dan Koon-hong Chan, *City Diplomacy and “Glocal” Governance: Revitalizing Cosmopolitan Democracy*, 29 INNOVATION: THE EURO. J. OF SOC. SCI. RES. 134, 141 (2016), <https://www.tandfonline.com/doi/full/10.1080/13511610.2016.1157684>.

28. See, e.g., Grace Dobush, *‘It’ll Change Back Again.’ Trump Declares Climate Change to Be No Big Deal*, FORTUNE (Oct. 15, 2018), <http://fortune.com/2018/10/15/trump-climate-change-60-minutes/>.

29. Press Release, Bloomberg Philanthropies, Bloomberg Philanthropies Announces the American Cities Climate Challenge to Support Mayors Tackling Climate Change in the United States (June 1, 2018), <https://www.bloomberg.org/press/releases/american-cities-climate-challenge/> (quoting Michael Bloomberg as saying “Mayors don’t look at climate change as an ideological issue. They look at it as an economic and public health issue.”).

30. *About C40*, C40 CITIES, <https://www.c40.org/about> (last visited Jan. 6, 2019) (“C40 is a network of the world’s megacities committed to addressing climate change.”).

31. See Causone, *supra* note 25.

32. *Id.*

2019]THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS77

Beyond networking with one another, cities are exerting their influence on the world stage. For example, mayors came out in force at COP21³³ with over 400 present to advocate for a larger role in the Paris negotiations and reinforce how integral cities are to addressing climate change.³⁴ It is possible that as urbanization increases so will the pressure for cities to engage globally, pushing the needle forward on expanding who the actors are in global governance.³⁵ These dialogues between cities, as well as between cities, nation-states, and supranational organizations are necessary to maximize efficiencies and cooperation on a time-sensitive global problem.

III. U.S. CITIES IN ACTION

“We want to unleash the power of the local level, the power of the grassroots, to forge ahead when nations falter, and we will keep acting even when nations fail, including our own.”³⁶—Mayor Bill de Blasio, New York, New York.

A. The Fight to Keep US Paris Agreement Commitments Alive

Municipal-level opposition to federal decisions on international agreements is not new. When the United States failed to ratify the Kyoto Protocol,³⁷ the mayor of Seattle, Greg Nickels, committed to the emissions reduction targets in the protocol and called on other cities to take similar action.³⁸ Many took him up on this offer in signing the U.S. Mayor’s Climate Protection Agreement,³⁹ an initiative that garnered over 1,000 signatories.⁴⁰ This “symbolic

33. United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP). COP21 resulted in the Paris Agreement.

34. See Nicola Tollin, *The Role of Cities and Local Authorities Following COP21 and the Paris Agreement*, 16 *SOSTENIBILE?* 43, 45–46 (Dec. 2015), https://www.rug.nl/about-us/who-are-we/sustainability/greenoffice/cursusii/myth3/theroleofcities_nicolatollin.pdf.

35. See Robert Muggah & Eugene Zapata-Garesche, *How Cities are Rewiring International Affairs*, *DEVEX* (Aug. 3, 2016), <https://www.devex.com/news/how-cities-are-rewiring-international-affairs-88517>.

36. Bill de Blasio, Mayor, N.Y.C., *Remarks at the Opening Plenary of the World Economic Development Impact Summit*, N.Y.C. (Sept. 24, 2018), <https://www1.nyc.gov/office-of-the-mayor/news/485-18/transcript-mayor-de-blasio-delivers-remarks-the-opening-plenary-the-world-economic>.

37. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162, <https://unfccc.int/resource/docs/convkp/kpeng.pdf>.

38. Greg Nickels, *All Politics is Local – Even Climate Change*, *THE SEATTLE TIMES* (Feb. 18, 2011), <https://www.seattletimes.com/opinion/all-politics-is-local-8212-even-climate-change/>.

39. *Id.*

40. *Mayors Climate Protection Center*, THE U.S. CONFERENCE OF MAYORS, <https://www.usmayors.org/mayors-climate-protection-center/> (last visited Mar. 3, 2019).

ratification,”⁴¹ of a treaty by subnational actors, especially in the face of nation-level opposition, creates a bit of cognitive dissonance in global governance and international law. Although city activism in climate change predates the Paris Agreement, what may be novel is the pace and forward-leaning tactics of US cities.⁴²

The latest flurry of local activism began when President Trump invoked the name of the Steel City—Pittsburgh; in an often-quoted remark in his withdrawal announcement, Trump stated that he “was elected to represent the citizens of Pittsburgh, not Paris.”⁴³ The comment elicited a backlash from the mayor of Pittsburgh himself, Bill Peduto, responding that his city “will follow the guidelines of the Paris Agreement for our people, our economy and future.”⁴⁴ A year later, Mayor Peduto remained committed to the goals of the Paris Agreement, even going beyond the agreement.⁴⁵ As such, President Trump’s city of choice to frame his “America First” justification for renouncing the climate agreement was out of touch with reality.⁴⁶

Mayor Peduto was far from the only one to leap into action. Michael Bloomberg, former mayor of New York City, former UN Special Envoy on Cities and Climate Change, and the current UN Special Envoy for Climate Action⁴⁷ also had a strong reaction. As will be discussed *infra*, Bloomberg acted quickly and

41. Barbara Oomen & Moritz Baumgärtel, *Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law*, 29 EURO. J. OF INTL. L. 607, 608 (2018), <https://doi.org/10.1093/ejil/chy021> (discussing “symbolic ratification” of treaties by cities).

42. See Tabuchi & Fountain, *supra* note 4 (quoting Robert C. Orr in that the notice of a US withdrawal from Paris “accelerat[ed] this process that was already underway,” referring to the actions of subnational actors and businesses).

43. Remarks Announcing United States Withdrawal From the United Nations Framework Convention on Climate Change Paris Agreement, *supra* note 3.

44. Lauren Gambino, *Pittsburgh Fires Back at Trump: We Stand with Paris, Not You*, THE GUARDIAN (June 1, 2017), <https://www.theguardian.com/us-news/2017/jun/01/pittsburgh-fires-back-trump-paris-agreement> (quoting Mayor Bill Peduto, @billpeduto, Twitter (June 1, 2017)).

45. Andrew Goldstein, *A Year Ago Trump’s ‘Pittsburgh not Paris’ Comment ‘Galvanized a Response,’ Mayor Says*, PITTSBURGH POST-GAZETTE (June 1, 2018), <https://www.post-gazette.com/news/environment/2018/06/01/Trump-Pittsburgh-comment-paris-accord-mayor-peduto/stories/201806010092>.

46. See *id.* (discussing how Trump’s “Pittsburgh, not Paris” comment is rooted in the past).

47. Press Release, United Nations, Secretary-General Appoints Michael R. Bloomberg of United States Special Envoy for Climate Action, UN Press Release SG/A/1791 (Mar. 5, 2018), <https://www.un.org/press/en/2018/sga1791.doc.htm>.

2019] THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS 79

comprehensively to continue U.S. efforts in the fight against climate change.⁴⁸ Moreover, one would be hard pressed to find a better advocate for city diplomacy.⁴⁹

The day after Trump's announcement, Bloomberg met with French President Emmanuel Macron and mayor of Paris, Anne Hidalgo to reassure the world of the United States' commitment to the Paris Agreement.⁵⁰ Bloomberg proclaimed that "Americans don't need Washington to meet our Paris commitment, and Americans are not going to let Washington stand in the way of fulfilling it."⁵¹ This proclamation was more than words; it was a preview of action to come.

Shortly after, Bloomberg, as Special Envoy for Cities and Climate Change, submitted a declaration to UN leaders, titled "We Are Still In."⁵² The declaration brought together a diverse set of leaders and organizations to commit to supporting the Paris Agreement.⁵³ In July 2017, America's Pledge, started by Bloomberg and former California Governor Jerry Brown, complimented the declaration.⁵⁴ The pledge aggregates and quantifies the steps taken by non-federal actors to reduce GHGs in line with the Paris Agreement.⁵⁵ This past summer, at the Global Climate Action Summit, Bloomberg and Brown released the "Fulfilling America's Pledge" report with the aggregated data.⁵⁶ The report revealed that

48. See, e.g., Mike Bloomberg, *Americans Don't Need Washington to Meet our Paris Commitment*, MEDIUM (June 5, 2017), <https://medium.com/@MikeBloomberg/americans-dont-need-washington-to-meet-our-paris-commitment-ab15c2fbce05>; see also Press Release, Bloomberg Philanthropies, Mike Bloomberg Sends Statement to the United Nations Following Unprecedented Outpouring of Support for Paris Agreement (June 5, 2017), <https://www.bloomberg.org/press/releases/mike-bloomberg-sends-statement-united-nations-following-unprecedented-outpouring-support-paris-agreement/>.

49. Parag Khanna & Mahanth Joishy, *Mayor of the World: How Bloomberg Flexes New York's Diplomatic Muscle*, CITY LAB (Sept. 21, 2011), <https://www.citylab.com/equity/2011/09/mayor-world-how-bloomberg-flexes-new-yorks-diplomatic-muscle/167/> ("New York belongs as much to the world as to America. Bloomberg, therefore, acts not just as mayor, but also effectively the head of a de facto city-state.").

50. Bloomberg, *supra* note 48.

51. *Id.*

52. Press Release, Bloomberg Philanthropies, Mike Bloomberg Sends Statement to the United Nations Following Unprecedented Outpouring of Support for Paris Agreement, *supra* note 48.

53. "We are Still In" Declaration, WE ARE STILL IN, <https://www.wearestillin.com/we-are-still-declaration> (last visited Mar. 3, 2019).

54. *About America's Pledge*, AMERICA'S PLEDGE, <https://www.americaspledgeonclimate.com/about/> (last visited Mar. 3, 2019).

55. *Id.*

56. Press Release, America's Pledge, Bottom-Up U.S. Climate Report "Fulfilling America's Pledge" Illustrates Progress towards Paris Agreement Target (Sept. 12, 2018),

the United States could make a significant dent in its NDC target under the Paris Agreement without the federal government.⁵⁷ However, whether subnational actors can cross that finish line alone remains to be seen.⁵⁸

There are less obvious ways in which U.S. cities are filling the leadership vacuum of the federal government on climate change. When the State Department, the face of U.S. foreign policy, did not sponsor the third annual US-China Climate Leaders Summit, the mayor of Boston, Martin J. Walsh, stepped up.⁵⁹ With the federal government no longer planning to assist in the bilateral summit, Boston, seemingly aware of the foreign affairs optics, did not want to partner directly with China.⁶⁰ So, they slightly reimagined the summit, turning to their network of international cities for assistance and rebranding the event as the International Mayors Climate Summit.⁶¹ The summit, rescued by Mayor Walsh, attracted mayors from the United States, United Kingdom, France, China, and Canada⁶²—a glaring example of city diplomacy, information sharing, and a U.S. city stepping up when the federal government steps out.

For his part at the summit, Mayor Walsh announced a new initiative on renewable energy pricing.⁶³ His effort, which includes a consortium of US cities, will collect data on energy demand and request quotes from renewable energy developers to meet the group's energy needs.⁶⁴ Thereby, harnessing the collective power of U.S. cities to combat climate change.

<https://www.americaspledgeonclimate.com/news/climate-report-fulfilling-americas-pledge-illustrates-progress-towards-paris-agreement-target/>.

57. *Id.*

58. *Id.* (noting that “[i]f bottom-up climate collaboration accelerates and the coalition broadens, real economy actors can carry the United States within striking distance of meeting its 2025 Paris pledge”).

59. Rich Barlow, *Fixing Climate Change Is Good Business, Whatever President Trump Says*, BU TODAY (June 11, 2018), <http://www.bu.edu/today/2018/international-mayors-climate-summit/>; see also Don Seiffert, *U.S.-China Climate Summit Won't Happen in Boston, Says Mayor*, BOSTON BUS. J. (May 31, 2017), <https://www.bizjournals.com/boston/news/2017/05/31/u-s-china-climate-summit-wont-happen-in-boston.html>.

60. Don Seiffert, *On-again, Off-again Climate Summit Now Planned for June*, BOSTON BUS. J. (May 9, 2018), <https://www.bizjournals.com/boston/news/2018/05/09/on-again-off-again-climate-summit-now-planned-for.html>.

61. *Id.*

62. Barlow, *supra* note 59.

63. Mayor's Office, *Mayor Walsh Calls on Cities to Join Large-scale Renewable Energy Initiative*, CITY OF BOSTON (June 7, 2018), <https://www.boston.gov/news/mayor-walsh-calls-cities-join-large-scale-renewable-energy-initiative>.

64. *Id.*

2019]THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS81

Global cities can be particularly influential in climate governance. New York City and London, a transatlantic power couple in wealth and influence, recently made a strong proposition in the fight against climate change. Mayor de Blasio and the mayor of London, Sadiq Khan, penned an op-ed in *The Guardian* to advocate for all cities to divest from the fossil fuel industry.⁶⁵ Divestment from fossil fuels is not only good in itself, but it enables funds to be diverted to clean energy and technology,⁶⁶ making this an important call to action.

The mayors were not only clear in the threat posed by climate change and the duty owed to their citizens to combat it, but also in their commitment to leading by example such that others can take similar action.⁶⁷ They further recognized their willingness to act even when states cannot, noting that they “are determined to push ahead with the goals of the Paris Agreement—stealing a march on many national governments.”⁶⁸ Undoubtedly, New York City and London project significant cultural influence, but in sheer economic terms, these cities and their mayors could have more leverage than most countries and sitting heads of state.⁶⁹ As such, invariably, the voices of these cities can carry significant weight among peers and the global community to drive action on climate change.

B. City Leadership and Structural Changes in Global Governance

Beyond symbolic ratifications, pledges, calls to action, and summits, U.S. cities are also in the business of drafting and signing non-binding multilateral agreements. In 2017, mayors from the United States, Mexico, Canada, and France signed a “first-of-its-kind” agreement at the North American Climate Change Summit,

65. Sadiq Khan & Bill de Blasio, *As New York and London Mayors, We Call on all Cities to Divest from Fossil Fuels*, THE GUARDIAN (Sept. 10, 2018), <https://www.theguardian.com/commentisfree/2018/sep/10/london-new-york-cities-divest-fossil-fuels-bill-de-blasio-sadiq-khan>.

66. Carolyn Kormann, *The Divestment Movement to Combat Climate Change is All Grown Up*, THE NEW YORKER (Sept. 14, 2018), <https://www.newyorker.com/news/dispatch/the-divestment-movement-to-combat-climate-change-is-all-grown-up>.

67. Khan & de Blasio, *supra* note 65.

68. *Id.*

69. Sharalaya, *supra* note 20; see also Richard Florida, *When Cities Are More Economically Powerful Than Nations*, CITYLAB (Mar. 16, 2017), <https://www.citylab.com/life/2017/03/the-economic-power-of-global-cities-compared-to-nations/519294/> (observing that New York City’s GDP is competitive with some of the largest economies in the world and London has a GDP close to that of The Netherlands).

called the Chicago Climate Charter.⁷⁰ The mayor of Chicago, Rahm Emanuel, who hosted the summit, lamented the failure of the U.S. government in that, “[i]t would be better to have a national partner rather than fighting against the current . . . of an administration that is openly hostile to smart policies...”⁷¹ Indeed, it would be ideal to have the administration on board, but in the interim, parallel⁷² power structures are flowering.

The local jurisdictions that signed on to the Chicago Charter committed to a more ambitious goal of achieving a percent decrease in their GHGs that is equal to or more than their respective countries’ NDC to the Paris Agreement.⁷³ Moreover, the charter complements and supports America’s Pledge.⁷⁴ As of January 2019, the charter has over seventy signatories from mayors across the United States and around the world.⁷⁵ Although non-binding, the charter further blurs the lines of actors and norm-creators in global climate governance.

As the home of the United Nations Secretariat, New York City has a unique relationship with the organization, which makes it fitting that it is also reinventing the relationship between cities and the UN. The UN has supported the localization of the Sustainable Development Goals (“SDGs”),⁷⁶ in New York, as well as in other U.S. cities, through the USA Sustainable Cities Initiative.⁷⁷

70. Press Release, Mayor’s Press Office City of Chicago, Mayor Emanuel and Global Mayors Sign the Chicago Climate Charter at the North American Climate Summit (Dec. 5, 2017), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2017/december/ChicagoClimateSummitCharter.html.

71. Aamer Madhani, *Forget Paris: U.S. Mayors Sign Their Own Pact After Trump Ditches Climate Accord*, USA TODAY (Dec. 4, 2017), <https://www.usatoday.com/story/news/2017/12/04/u-s-mayors-sign-pact-track-progress-paris-agreement/920305001/> (quoting Rahm Emmanuel, Mayor of Chicago).

72. *But see* Rogier van der Pluijm, *City Diplomacy: The Expanding Role of Cities in International Politics*, NETH.INST. OF INTL.REL. CLINGENDAEL DIPLOMACY PAPERS NO. 10., Apr. 2007, at 8–9, https://www.uclg.org/sites/default/files/20070400_cdsp_paper_pluijm.pdf (rejecting the term parallel diplomacy as applied in that the diplomatic environment of nation-states and cities is more blurred than comparable tracks would suggest).

73. Chicago Climate Charter art. 1(a) (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/December/ChicagoClimateCharter.pdf>.

74. Mayor’s Press Office City of Chicago, *supra* note 70.

75. *Signatories to the Chicago Climate Charter*, N. AM. CLIMATE SUMMIT, <https://northamericanclimatesummit.splashthat.com/> (last visited Mar. 3, 2019).

76. G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Oct. 21, 2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

77. *See generally* Sandra Ruckstuhl, Jessica Espey & Leslie Rae, *The USA Sustainable Cities Initiative: Lessons for City-Level SDG Action*, (Sustainable Development Solutions Network, Working Paper, 2018), <http://unsdsn.org/wp-content/uploads/2018/10/USA->

2019] THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS 83

Furthering their commitment to the SDGs and demonstrating their capacity for innovation, New York City pioneered the Voluntary Local Review (“VLR”) to report to the UN on the city’s progress towards the SDGs.⁷⁸ Whereas, nation-states undertake a Voluntary National Review (“VNR”) to report on their progress.⁷⁹ As such, New York City is mirroring a nation-state reporting to an intergovernmental organization.

The VLR is significant in that the Paris Agreement complements the SDGs. Indeed, the Agreement recognizes the link between climate change and sustainable development, observing “. . . the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty”⁸⁰ The most explicit connection between the SDGs and the Paris Agreement is goal 13 on combatting climate change,⁸¹ but given the interdependence between climate change and other global issues, many of the SDGs are relevant.

Other global cities have recognized the innovation and utility of New York City’s voluntary review process. In September 2018, Helsinki committed to being the second city to submit a VLR⁸² with the mayor of Helsinki characterizing the move as a way for his city “to stand out as a forerunner in local implementation of global responsibility.”⁸³ He further observed how local level reviews would allow for cities to compare and learn from their efforts.⁸⁴ More recently in December 2018, the VLR merited the Guangzhou International Award for Urban Innovation receiving a \$20,000 grant to further the initiative.⁸⁵ Such a positive reception would indicate

SCI_Lessons-on-City-Level-SDG-Action_Oct-2018.pdf.

78. Alexandra Hiniker, *NYC’s Voluntary Local Review Named Finalist for Urban Innovation Award*, GLOBAL N.Y.C. (Nov. 1, 2018), <https://medium.com/@globalnyc/nycs-voluntary-local-review-named-finalist-for-urban-innovation-award-a1898c03fe55>.

79. *Voluntary National Reviews Database*, SUSTAINABLE DEVELOPMENT, <https://sustainabledevelopment.un.org/vnrs/> (last visited Jan. 7, 2019).

80. Paris Agreement, *supra* note 7, Preamble.

81. G.A. Res. 70/1, *supra* note 76, at 23.

82. *Helsinki Joins New York in Commitment to Review Local Progress Toward Global Sustainable Development Goals*, BUS. WIRE (Sept. 24, 2018), <https://www.businesswire.com/news/home/20180924005633/en/Helsinki-Joins-New-York-Commitment-Review-Local>.

83. *Id.* (quoting Mayor of Helsinki Jan Vapaavuori at The Social Good Summit 2018, New York City, Sept. 23, 2018).

84. *Id.*

85. Press Release, Mayor’s Office for International Affairs, Mayor de Blasio and International Affairs Commissioner Abeywardena announce New York City Wins Urban Innovation Award for Local Work on Global Sustainable Development Goals (Dec. 10,

that the VLR is not only going to continue but also expand to other cities. This development would further entrench the voice of subnational actors in the United Nations system, as well as increase the capacity for lessons learned and information sharing among cities.

The recent development of the Urban 20 (“U20”) further illustrates how city participation in global governance is mirroring that of nation-states. In late 2017, at the One Planet Summit, the mayors of Paris and Buenos Aires initiated the U20, an opportunity for cities to exchange ideas and form joint positions on global issues, including climate change ahead of the Group of Twenty (“G20”) Summit.⁸⁶ To that end, in October 2018, mayors from global cities, including New York, Chicago, Los Angeles, Houston, and Dallas, met in Buenos Aires for the inaugural summit.⁸⁷ The meeting was a success and resulted in a joint position on climate change.⁸⁸ Their recommendations included a robust and expedient implementation of the Paris Agreement to prevent the global temperature from going beyond a 1.5°C rise, as well as fast-tracking the move away from fossil fuels and towards renewables.⁸⁹ The U20 communicated their views to the President of the host country for the summit, Argentina and the G20.⁹⁰ Ultimately, the G20, except the United States, reiterated their commitment to the Paris Agreement.⁹¹ The U20, nonetheless, demonstrates that cities are becoming more strategic about exerting their influence and increasingly institutionalized in global governance.

2018), <https://www1.nyc.gov/assets/international/downloads/pdf/guangzhou-award-release-20181210.pdf>.

86. *Global Commitment, Local Action: Resilience at the One Planet Summit*, THE WORLD BANK (Feb. 5, 2018), <https://www.worldbank.org/en/news/feature/2018/02/05/global-commitment-local-action-resilience-at-the-one-planet-summit>.

87. *About U20*, URBAN 20, <http://www.urban20.org/en/about-u20> (last visited Mar. 3, 2019); *see also* Press Release, Urban 20, Cities Urge the G20 to Work with Them to Tackle Climate Change, the Future of Work and Social Integration (Oct. 30, 2018), <http://www.urban20.org/summit/en/press-room/cities-urge-the-g20-to-work-with-them-to-tackle-climate-change-the-future-of-work-and-social-integration>.

88. Press Release, Urban 20, *supra* note 87.

89. *Id.*

90. *Id.*

91. G20 Leaders’ Declaration: Building Consensus for Fair and Sustainable Development, ¶ 19–20 (Dec. 1, 2018), http://www.g20.utoronto.ca/2018/buenos_aires_leaders_declaration.pdf.

IV. CITIES AS ACTORS AND RULE-MAKERS IN GLOBAL GOVERNANCE

A. Actors

Cities established the foundation of modern political structures with the Greek city-states introducing democracy and diplomacy.⁹² Indeed, most global cities are older than their respective nation-states.⁹³ New York City, for example, predates the founding of the United States by well over one hundred years.⁹⁴ Whereas foreign policy was once the prerogative of cities,⁹⁵ the Westphalian system (1648) altered this power structure by placing nation-states at the forefront.⁹⁶ With the new hierarchy came the multilateral institutions and the governing rules revolving around nation-states.⁹⁷

Over the past few decades, cities have been working towards regaining influence in the international sphere, and they are making progress.⁹⁸ Globalization prompted this movement of cities back into the diplomatic space blurring the lines between the international and the local.⁹⁹ However, cities may have a comparative advantage over nation-states in addressing global problems inasmuch as they can bypass stalemates between nation-states and garner buy-in from citizens in ways that a national government cannot.¹⁰⁰ In the face of complex global challenges, cities are primed to lead the world again.

As the examples in Part III *supra* demonstrate, when it comes to global climate governance, many U.S. cities are already behaving similarly to nation-states.¹⁰¹ Moreover, as U.S. cities are moving more towards global climate governance, they are also helping to change the face of federalism domestically.¹⁰² This background

92. Koon-hong Chan, *supra* note 27, at 135.

93. Sharalaya, *supra* note 20.

94. *1625, More or Less*, N.Y. TIMES (July 17, 2008), <https://www.nytimes.com/2008/07/17/opinion/17thu4.html>.

95. *See* van der Pluijm, *supra* note 72, at 5.

96. *Id.*

97. Muggah & Zapata-Garesche, *supra* note 35.

98. Agustí Fernández de Losada, *From Rhetoric to Politics: Can Cities Gain Influence Upon Global Agendas?*, ISTITUTE PER GLI STUDI DI POLITICA INTERNAZIONALE (Nov. 6, 2018), <https://www.ispionline.it/it/pubblicazione/rhetoric-politics-can-cities-gain-influence-upon-global-agendas-21555>; *see also* Muggah & Zapata-Garesche, *supra* note 35.

99. *See* van der Pluijm, *supra* note 72, at 7–8.

100. Koon-hong Chan, *supra* note 27, at 135, 144.

101. Sharalaya, *supra* note 20; *see also supra* Part II.

102. Stuart S. Malawer, *Trump's Foreign Policy and the New Federalism*, RICH. TIMES DISPATCH (June 18, 2017), https://www.richmond.com/opinion/their-opinion/guest-column-ists/stuart-s-malawer-trump-s-foreign-policy-and-the-new/article_fff22996-d7cb-596f-a1b1-7cb1573e643e.html.

beckons at least two questions: (1) what, if any, internal restraints are on U.S. cities in foreign affairs; and (2) whether the participation of cities in global governance threatens the concept of a nation-state?

Unsurprisingly, there are restraints on U.S. subnational actors in foreign affairs. Article 1, Section 10 of the U.S. Constitution prohibits, *inter alia*, states from entering agreements with other states or foreign powers without the permission of Congress and prohibits states from making treaties.¹⁰³ Regarding interpretation, the U.S. State Department views these constitutional prohibitions as only applying to legally binding agreements.¹⁰⁴ Given the non-binding activities described in Part III *supra*, current U.S. city initiatives should not run afoul of the prohibitions.

More likely, but also less clear is the possibility of subnational activities coming into contact with foreign affairs preemption.¹⁰⁵ In the current climate, one concern is whether the *Movesian v. Versicherung AG*¹⁰⁶ decision by the Ninth Circuit requires a “real purpose” inquiry, i.e., was the state law made in response to a foreign affairs issue or to address a usual state responsibility.¹⁰⁷ If courts apply the “real purpose” test, it could put subnational laws made in response to Trump’s withdrawal from the Paris Agreement rather than made to exercise state responsibility for the environment in jeopardy of preemption.¹⁰⁸ Thus, states and cities may want to tread carefully to avoid foreign affairs preemption.

There are noticeable changes to the actors involved in global governance. For example, international organizations are working directly with cities. As mentioned *supra*, the UN is engaging with cities on the VLR.¹⁰⁹ Concerning multilateral climate negotiations,

103. U.S. CONST. art. 1, § 10.

104. *Constitutional Limits on States’ Efforts to “Uphold” the Paris Agreement*, CONG. RES. SERVICE REP. & ANALYSIS (June 27, 2017), <https://fas.org/sgp/crs/misc/uphold.pdf> (citing Sally J. Cummins & David P. Stewart, eds., *Digest of United States Practice in International Law 2001*, (Washington, D.C.: International Law Institute, 2002): 185, <https://2009-2017.state.gov/documents/organization/139600.pdf>).

105. *Constitutional Limits on States’ Efforts to “Uphold” the Paris Agreement*, *supra* note 104.

106. *Movesian v. Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012).

107. *Constitutional Limits on States’ Efforts to “Uphold” the Paris Agreement*, *supra* note 104 (discussing *Movesian v. Versicherung AG*).

108. *Id.*; see also Jeff McMahon, *No, States and Cities Can’t Uphold Paris Agreement*, *Congressional Research Service Says*, FORBES (July 11, 2017), <https://www.forbes.com/sites/jeffmcmahon/2017/07/11/no-states-cannot-uphold-paris-agreement-congressional-research-service-says/>.

109. See *supra* Part II.

2019]THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS87

cities are expected to play an increased role moving forward pursuant to an announcement from former UN Secretary-General Ban Ki-Moon.¹¹⁰ Finally, the World Bank is working with cities on climate change. In 2011, it partnered with the C40 to harmonize approaches on climate action plans and GHG measurements.¹¹¹ The World Bank further committed to close the information gap between nation-states and cities by creating an access point for C40 members to learn about and take advantage of climate-change programming.¹¹² More recently, under its City Resilience Program, the World Bank partnered with the Global Covenant of Mayors for Climate & Energy to provide 150 cities climate finance and technical assistance to take action on climate change.¹¹³ These examples, among others, demonstrate how cities are chipping away at the exclusivity of nation-states in global governance.¹¹⁴

Even so, the Westphalian system of nation-states is not on the verge of collapse or dissolving anytime soon. Cities are still formally on the outside of many institutions because they are not nation-states and do not have international legal personality, an issue to be discussed *infra*.¹¹⁵ The more important concern is practicality rather than properly reorganizing the world order insofar as current global challenges, like climate change, are not well-suited for the rigid Westphalian system.¹¹⁶

Globally, cities are needed to cooperate and act when nation-states cannot. History shows that coming to a consensus on international climate change action is not an easy task.¹¹⁷ Even with

110. Tollin, *supra* note 34, at 46. (referencing “UN Secretary General Ban Ki-Moon[’s] announcement that cities will be better recognized in future negotiations”).

111. Press Release, World Bank, C40 and World Bank Form Groundbreaking Climate Change Action Partnership (June 1, 2011), <http://www.worldbank.org/en/news/press-release/2011/06/01/c40-world-bank-form-groundbreaking-climate-change-action-partnership>.

112. *Id.* (characterizing the World Bank programs as capacity building, technical assistance, and climate finance).

113. The World Bank, *Global Covenant of Mayors and World Bank Announce Partnership to Fight Climate Change*, CONNECT 4 CLIMATE (Dec. 15, 2017), <https://www.connect4climate.org/initiative/global-covenant-mayors-and-world-bank-announce-partnership-fight-climate-change>.

114. See Markus Fraundorfer, *The Role of Cities in Shaping Transnational Law in Climate Governance*, 8 GLOBAL POL’Y, 24 (Feb. 2017), <https://www.globalpolicyjournal.com/articles/international-law-and-human-rights/role-cities-shaping-transnational-law-climate-governance>.

115. See van der Pluijm, *supra* note 72, at 14.

116. *Id.*; see also Koon-hong Chan, *supra* note 27, at 134–35.

117. Koon-hong Chan, *supra* note 27, at 135 (referring to problems at COP15); see also Fraundorfer *supra* note 114, at 25.

the success of forging the Paris Agreement, there are still details to be worked out. For example, the recent stalemate at COP24 in Katowice, Poland, demonstrates the need for subnational actors to continue to step up.¹¹⁸ At COP24, although there was an agreement on a rulebook to implement the Paris Agreement, countries also “kicked the can down the road” on the more difficult issues, including increasing existing emissions reduction commitments to meet current science.¹¹⁹ City diplomacy could be the tool needed to push forward on increasing emissions targets in the face of national reluctance.¹²⁰

B. Rule-makers

The international law field has not taken much notice of the rise of cities.¹²¹ The relationship between cities and international law recently attracted the attention of the International Law Association (“ILA”). The ILA formed a study group on the Role of Cities in International Law to research questions on the changing international legal order and how cities fit into international law.¹²² Ultimately, that is the question—where do cities belong in the international law regime?

Cities are the square peg, and international law is the round hole—there is no easy fit.¹²³ Traditionally, international law was exclusively between nation-states.¹²⁴ Recognized nation-states

118. Jackson Ewing, *Stalemate in Poland revealed central tension of Paris Agreement*, CLIMATE HOME NEWS (Feb. 12, 2019), <https://www.climatechangenews.com/2019/02/12/stalemate-poland-revealed-central-tension-paris-agreement/>; *Deadlock Continues in Katowice as COP24 Climate Talks Enter Extra Time*, BUS. STANDARD (Dec. 15, 2018), https://www.business-standard.com/article/international/deadlock-continues-in-katowice-as-cop24-climate-talks-enter-extra-time-118121500527_1.html.

119. Fiona Harvey, *Progress and Problems as UN Climate Change Talks End with a Deal*, THE GUARDIAN (Dec. 15, 2018), <https://www.theguardian.com/environment/2018/dec/15/progress-and-problems-as-un-climate-change-talks-end-with-a-deal>.

120. Koon-hong Chan, *supra* note 27, at 141 (observing that cities have the ability to collaborate and work together, even when their respective nation-states are at a stalemate).

121. Oomen & Baumgärtel, *supra* note 41, at 608.

122. *New ILA Study Group on The Role of Cities in International Law*, ASSER INST. (July 3, 2017), <http://www.asser.nl/about-the-institute/asser-today/new-ila-study-group-on-the-role-of-cities-in-international-law/>.

123. Helmut Philipp Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 EUR. J. INTL. L. 255, 270 (2015), <https://doi.org/10.1093/ejil/chv011>.

124. Peter Spiro, *The Waning Federal Monopoly over Foreign Relations*, LAWFARE (Jan. 9, 2017), <https://www.lawfareblog.com/waning-federal-monopoly-over-foreign-relations-0> (noting that “. . . traditional international law recognized the nation-state as the only entity with legal personality”).

2019]THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS89

endowed with sovereign equality, territorial integrity, and legal personality were at the top of the global order.¹²⁵ Subnational governments, like cities, belonged in this framework inasmuch as they may need to execute the law of the land, assuming vertical integration of international law,¹²⁶ but their interests and utility, as discussed *supra*, go beyond being subservient to the nation-state in global governance.¹²⁷ In other words, “[c]ities are no longer just norm-takers, they are norm-makers.”¹²⁸

As is, cities do not have international legal personality, rather global governance relegates them to the periphery.¹²⁹ Subnational governments, like cities, may be characterized as having a hybrid character in international law.¹³⁰ They could be acting as an extension of the nation-state, or more likely as a unique form of a non-state actor (“NSA”), being both part of the nation-state, but having their own agenda and political will.¹³¹ However, even without legal personality, the landscape between cities and international law is evolving in that “international legal rules increasingly extend over cities.”¹³² One manifestation of this is the way that many U.S. cities have committed to the Paris Agreement—they have localized international norms.¹³³

Because of the aforementioned structural issues, cities cannot make binding international law. They may, however, be pioneering soft transnational law, particularly through their city-to-city networks on climate change.¹³⁴ Going beyond even soft law, Professor Helmut Philipp posits that these undertakings of cities “may generate a different form of normativity, entrapping cities (and possibly also other actors) in a net of commitments which may slowly harden into

125. UN Charter, Art. 2(1) and Art. 2(4) (regarding sovereign equality and territorial sovereignty respectively); *International Law: A Handbook for Judges*, 35 *STUD. TRANSNAT'L LEGAL POL'Y* 61 (2003).

126. Antonios Tzanakopoulos, *Domestic Courts in International Law: The International Judicial Function of National Courts*, 34 *Loy. L.A. Int'l & Comp. L. Rev.* 133, 138 (2011).

127. See *supra* Part II; see also Aust, *supra* note 123, at 269.

128. Muggah & Zapata-Garesche, *supra* note 35.

129. *Id.*

130. Aust, *supra* note 123, at 269.

131. *Id.*

132. Van der Pluijm, *supra* note 72, at 14.

133. *Id.*

134. Fraundorfer, *supra* note 114, at 29.

something akin to binding law.”¹³⁵ Regardless of the frame, at the least cities have the networks and capacity to influence the direction of international law.

V. CHALLENGES TO MEETING US COMMITMENTS UNDER THE PARIS AGREEMENT

As discussed, a range of non-federal actors are attempting to meet U.S. commitments under the Paris Agreement, but will their actions, even in the aggregate, be enough? This Part briefly explores some of the structural and practical issues in meeting U.S. emissions targets and financial commitments, as well as preserving the global will of the Paris Agreement absent U.S. involvement.

A. Emissions Reduction

Non-federal actors can make great strides towards the nationally determined contribution of the United States. However, it is not clear that they will be able to meet it alone. At the state level, a 2017 study by the Rhodium Group found that the members of the United States Climate Alliance were on track to meet their portion of U.S. reductions under the Paris Agreement.¹³⁶ However, the fourteen states that made up the Alliance at that time only represented a little over one-third of the U.S. population, leaving the country estimated to miss its emissions reduction target by a significant amount.¹³⁷ Since then, the alliance added three more states and grew to represent forty percent of the population.¹³⁸

As discussed *supra*, a more recent study, “Fulfilling America’s Pledge,” indicated that with current commitments and market forces, the United States would be about two-thirds towards the U.S. Paris Agreement target for emissions reductions.¹³⁹ The study further found that by ramping up the engagement of the “real economy,” the United States could be “within striking distance” of their emissions reduction commitment.¹⁴⁰ So, it is possible that despite the United

135. Aust, *supra* note 123, at 273.

136. Brad Plumer, *How Can U.S. States Fight Climate Change if Trump Quits the Paris Accord?*, N.Y. TIMES (Sept. 20, 2017), <https://www.nytimes.com/2017/09/20/climate/paris-climate-accord-trump.html>.

137. *Id.*

138. *Fact Sheet*, U.S. CLIMATE ALLIANCE, <https://www.usclimatealliance.org/us-climate-alliance-fact-sheet/> (last visited Mar. 3, 2019).

139. Nate Hultman et al., *Fulfilling America’s Pledge*, BLOOMBERG PHILANTHROPIES 9 (2018), <https://www.bbhub.io/dotorg/sites/28/2018/09/Fulfilling-Americas-Pledge-2018.pdf>.

140. *Id.*

2019] THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS 91

States' stance on the Paris Agreement, non-federal actors can help more or less meet the nationally determined contribution of the United States.¹⁴¹ Even if the United States can meet its emissions reduction target, there are additional issues to be solved, including closing the gap in federally funded research for new climate technologies.¹⁴²

B. Climate Finance

A significant obstacle to combatting climate change is obtaining the capital for climate finance. This financing is vital in that it encourages emerging economies to adopt clean energy, and helps the countries least responsible for climate change to adapt.¹⁴³ In the 2009 Copenhagen Accord, developed countries committed to making \$100 billion a year in climate finance available by 2020.¹⁴⁴ As discussed *supra*, climate finance is a crucial feature of the Paris Agreement,¹⁴⁵ and United States abandonment of the Paris Agreement places this financing in peril.¹⁴⁶ Climate finance is not a handout, but an investment in the future of a shared planet.¹⁴⁷ As “the largest historical emitter of carbon dioxide,”¹⁴⁸ U.S. financing to developing countries would also provide a modicum of justice for the damage

141. *Id.*

142. Plumer, *supra* note 136.

143. See Karl Mathiesen, *US Cities and States Back Paris Deal But Ignore Climate Finance*, CLIMATE HOME NEWS (June 15, 2017), <http://www.climatechangenews.com/2017/06/15/us-cities-states-back-paris-deal-ignore-climate-finance/>.

144. U.N. Framework Convention on Climate Change, *Copenhagen Accord*, ¶ 8, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009), <https://unfccc.int/resource/docs/2009/cop15/eng/107.pdf> (noting that “[i]n the context of meaningful mitigation actions and transparency on implementation, developed countries commit to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries. This funding will come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance.”).

145. Paris Agreement, *supra* note 7, at art. 9(1) (providing that “[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”).

146. Patricia Galvao Ferreira, *Without the U.S., Countries Like Canada Must Save the Paris Agreement*, THE PROVINCE (Dec. 11, 2018), <https://theprovince.com/opinion/oped/patricia-galvao-ferreira-without-the-u-s-countries-like-canada-must-save-the-paris-agreement>.

147. Emily Storz, *Q+A: Why Should the United States Contribute to Climate Finance*, DREXEL NEWS BLOG (Nov. 6, 2018), <https://newsblog.drexel.edu/2018/11/06/qa-why-should-the-united-states-contribute-to-climate-finance/> (discussing how the whole world benefits from mitigation efforts).

148. *Id.*

done.¹⁴⁹ Thus, the United States has both a moral obligation and more practically, a self-interest in ensuring the success of climate finance.

Though cities may be able to reduce emissions consistent with the Paris Agreement, it is doubtful that they could make up the shortfall in U.S. funding.¹⁵⁰ Michael Bloomberg has filled some of the funding gaps. In April 2018, he committed \$4.5 million through his philanthropic foundation to meet the remaining U.S. annual contribution to the UN Framework Convention on Climate Change (“UNFCCC”) Secretariat (“UN Climate Change Secretariat”).¹⁵¹ Bloomberg further pledged to fill this gap in 2019 should the U.S. government not meet its share again.¹⁵² As such currently, that particular gap in U.S. funding will be met.

However, there is a much larger and more consequential U.S. funding shortfall to the Green Climate Fund that provides climate finance to developing countries.¹⁵³ The Obama Administration pledged \$3 billion USD to the GCF by 2020.¹⁵⁴ The U.S. government has only provided \$1 billion USD of the pledge with Trump ceasing further contributions.¹⁵⁵ Thus, the United States leaves behind a substantial financial gap.

Some other countries are justifiably reluctant to fill the gap left by the United States with the German environment minister commenting that “[n]o country that refuses joint international solidarity can expect that others just step in to fill the gap.”¹⁵⁶ By contrast, other countries were open to the possibility of giving or raising additional capital.¹⁵⁷ More recently, at COP24, several

149. *Id.*

150. Madhani, *supra* note 71.

151. Press Release, Bloomberg Philanthropies, Michael R. Bloomberg Provides Funding for UN Climate Change Secretariat to Ensure U.S. Will Honor Paris Commitment (Apr. 22, 2018), <https://www.bloomberg.org/press/releases/bloomberg-funding-un-climate-change-secretariat-ensure-us-will-honor-paris-commitment> (noting that the US Congress allocated \$3 million in 2018 towards \$7.5 million and Bloomberg closed the gap).

152. *Id.*

153. Sophie Yeo, *Michael Bloomberg’s Millions Can’t Compensate for Trump’s Climate Policies*, WASHINGTON POST (June 6, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/06/05/michael-bloombergs-millions-cant-compensate-for-trumps-climate-policies/>.

154. Benjy Sarlin, *Why Trump Is Seeing Red About the ‘Green Climate Fund’*, NBC NEWS (June 1, 2017), <https://www.nbcnews.com/politics/white-house/why-trump-seeing-red-about-green-climate-fund-n767351>.

155. *Id.*

156. Yeo, *supra* note 153.

157. *Id.*

2019] THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS 93

countries, including Germany, did pledge additional funding to the GCF, but that does not mean that these countries were specifically covering the U.S. shortfall.¹⁵⁸ Indeed, though the additional pledges were appreciated, given the need they were still not enough.¹⁵⁹

There are other initiatives to drive up climate finance. In September 2018, UN Secretary-General António Guterres appointed Michael Bloomberg to lead a new initiative to mobilize private funding for climate finance.¹⁶⁰ Moreover, U.S. cities and states, the private sector, and individuals are eligible to contribute to climate finance.¹⁶¹ In a June 2017 city council resolution, Seattle committed to working with various actors to help realize U.S. commitments under the Paris Agreement, including support of the GCF.¹⁶² Unfortunately, Seattle appears to be outside of the norm on this issue.¹⁶³

C. Fragile Trust

Finally, the issue that is hardest to quantify is: how will an impending U.S. withdrawal undermine the trust inherent to the Paris Agreement.¹⁶⁴ Structurally, the Paris Agreement does not have ‘sticks,’ but rather compels compliance through openness and peer pressure.¹⁶⁵ Given this structure and the collective action nature of climate change, every country has to do their part—no free riders allowed. President Trump’s renunciation of the Paris Agreement,

158. Megan Rowling, *Climate Funding Undershoots Real Needs, But Hope Grows for Future*, REUTERS (Dec. 17, 2018), <https://www.reuters.com/article/us-climatechange-accord-finance/climate-funding-undershoots-real-needs-but-hope-grows-for-future-idUSKBN1OG22T>.

159. *Id.*

160. Press Release, Bloomberg Philanthropies, UN Secretary-General Taps UN Special Envoy Michael R. Bloomberg to Lead Climate Finance Leadership Initiative (Sep. 26, 2018), <https://www.bloomberg.org/press/releases/un-secretary-general-taps-un-special-envoy-bloomberg-lead-climate-finance-leadership-initiative/> (discussing the Climate Finance Leadership Initiative).

161. Erin Graham, *What’s Really Needed to Fight Climate Change Is Money, and Trump Will Not Contribute a Cent*, MOTHERJONES (Oct. 27, 2018), <https://www.motherjones.com/environment/2018/10/whats-really-needed-to-fight-climate-change-is-money-and-trump-will-not-contribute-a-cent/>.

162. Seattle City Council, Res. 31757, §3 (June 12, 2017), <https://seattle.legistar.com/View.ashx?M=F&ID=5292471&GUID=747E72CA-4DF6-4ECF-AE90-DA1B6564B6DD>; see also Mathiesen, *supra* note 143.

163. Mathiesen, *supra* note 143.

164. David Roberts, *The “Trump Effect” Threatens the Future of the Paris Climate Agreement*, VOX (Dec. 12, 2018), <https://www.vox.com/energy-and-environment/2018/12/3/18123310/cop24-trump-paris-climate-agreement>.

165. *Id.*

inter alia, has already emboldened other countries, like Australia, Turkey, and Brazil to threaten the cooperative framework.¹⁶⁶ The grim reality is that “[w]hen the US . . . drops out to make as much money as it can on fossil fuels while the world burns, it strengthens the hand of naysayers in every national government.”¹⁶⁷ As discussed in Part III *supra*, Michael Bloomberg worked quickly to reassure the world of the U.S. commitment to the Paris Agreement because preserving the trust of States Parties is important to the underlying goals.¹⁶⁸

German Chancellor Fellow, Nandan Sharalaya, described the failure of the United States to join the Kyoto Protocol as “the death knell for the agreement and international cooperation at large.”¹⁶⁹ However, much has changed since Kyoto, with cities undertaking climate change initiatives at a rapid pace.¹⁷⁰ The leadership of U.S. cities and other actors may save the Paris Agreement from a similar fate by demonstrating commitment, even absent the national government.¹⁷¹

VI. CONCLUSION

Climate change does not distinguish between nation-states nor between nation-states and their respective subnational actors. Though some communities are more vulnerable than others, it is a classic collective action problem impacting all of humanity. Accordingly, U.S. policy that reflects American isolationism and exceptionalism in global climate governance is detrimental to fighting climate change. Although cities, states, and other non-federal actors may not be able to carry all of the weight of meeting U.S. commitments to the Paris Agreement, they are trying. The current political environment makes federalism, state and local officials, and Michael Bloomberg, the metaphoric Bruce Wayne to Trump’s Joker, the heroes of the story in salvaging U.S. efforts to

166. *Id.*; see also Ben Doherty, *Australia Turns Back on Allies as It Refuses to Cut Emissions above Paris Pledge*, THE GUARDIAN (Dec. 12, 2018), <https://www.theguardian.com/environment/2018/dec/13/australia-turns-back-on-allies-as-it-refuses-to-cut-emissions-above-paris-pledge>.

167. Roberts, *supra* note 164.

168. See *supra* note 48.

169. Sharalaya, *supra* note 20.

170. See *supra* Part II(A).

171. *Id.*

2019]THE ROLE OF US CITIES IN ADVANCING PARIS AGREEMENT GOALS95

combat climate change. Moreover, this tension between the federal and subnational governments has led to innovation in the way that U.S. cities interact with global climate governance.

As uncomfortable as it may be to traditional ideas of the nation-state and actors in international law, the rise of cities in global climate governance is a necessary evolution of the system. Due to the unique position of cities and the difficulties of negotiations among nation-states, the world may hinge on city diplomacy and leadership to prevent an incurable climate disaster. If the forward-leaning actions of cities in global governance begin to test long-held norms, then a habitable planet and human survival is worth any structural shift.