Article

The Pledging World Order

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There is an emerging world order characterized by unilateral pledges within a legal or "legal-ish" architecture of commitments. The pledging world order has materialized in the international legal response to climate change and in other diverse sites. It crosses and blurs the public-private divide. It erodes distinctions between multilateralism and localism, law and not-law, and progress and stasis. It is both a symptom of and a contributor to the dismantling of the Westphalian and postwar orders. Its report card is mixed: While pledging can be highly ineffective as a legal technology, the pledging world order may respond to some legitimacy concerns that attach to earlier orders. And this may be the best available method to respond to important global commons problems like climate change, biodiversity loss, orbital debris, and other emerging issues.

This Article makes three principal contributions. First, it identifies pledging as a treaty design choice and contrasts it with a variety of standard forms of international lawmaking. Second, it casts pledging as a trans-regime, trans-substantive ordering device that appears both inside and outside of law, in public and private sites, and at all levels of organization. Third, it identifies features of the world order that pledging reflects. Specifically, the pledging world order privileges function over status, departs from the top-down methods of deep cooperation common to the postwar legal order, and embraces a form of coordinated autonomy. Reformers might make design choices to improve this order, try to reclaim features of older orders, or reject both paths and turn to something new.

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INTRODUCTION

Conflicting reports emerged in the popular press after the major United Nations (UN) climate conference in Glasgow in November 2021. Some reports were bleak: National pledges made at the conference were not sufficient to

prevent a two degrees Celsius increase over the next century.[1] Other reports were celebratory: The global financial sector pledged to invest $130 trillion in clean energy.[2] Meanwhile, Greta Thunberg and a throng of supporters chanted "blah blah blah."[3] The unifying thread in this reporting is that the world has staked its climate future on a system of unilateral pledges.

This Article claims that this system of pledges reflects a distinct kind of world order, which I call the "pledging world order."[4] Pledging is a trans-substantive, trans-regime phenomenon. It is the product of converging trends within international law and outside of it, appearing at various levels of organization and crossing the public/private divide.[5] The pledging world order departs from some of the fundamental premises of earlier orders and reframes enduring questions about justice, equity, distribution, and legitimacy.

The argument begins with a set of definitions: A pledge is a promise. Unlike many contractual promises, it does not involve a bargained-for exchange.[6] Unlike many treaty promises, the pledge is not formally reciprocal.[7]

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1. Kate Abnett, *World Heading for 2.4C of Warming After Latest Climate Pledges — Analysts*, REUTERS (Nov. 9, 2021, 10:03 AM), https://www.reuters.com/business/cop/world-track-24c-global-warming-after-latest-pledges-analysts-2021-11-09.

2. Liz Alderman & Eshe Nelson, *Global Finance Industry Says it Has $130 Trillion to Invest in Efforts to Tackle Climate Change*, N.Y. TIMES (Nov. 3, 2021), https://www.nytimes.com/2021/11/03/world/europe/cop26-climate-change-finance-industry.html.

3. Alyssa Lukpat & Marc Santora, *Greta Thunberg Joins a Protest in Glasgow*, N.Y. TIMES (Nov. 1, 2021), https://www.nytimes.com/2021/11/01/world/europe/greta-thunberg-cop26-glasgow.html.

4. While theorists in international relations sometimes tend to focus on the liberal postwar order as *the* world order, recent scholarship has recognized a multiplicity of coexisting orders, organized by issue, region, or otherwise. *See, e.g.*, Alastair Iain Johnston, *China in a World of Orders: Rethinking Compliance and Challenge in Beijing's International Relations*, 44 INT'L SEC. 9 (2019) (identifying eight "issue-specific" orders in areas such as military, trade, information, and political development); TRANSNATIONAL LEGAL ORDERS (Gregory Shaffer & Terence C. Halliday eds., 2015) (defining an order as a regularity of behavioral orientation, communication, and action and noting that transnational legal orders are diverse, overlapping, and evolving); MICHAEL J. MAZARR, MIRANDA PRIEBE, ANDREW RADIN & ASTRID STUTH CEVALLOS, UNDERSTANDING THE CURRENT INTERNATIONAL ORDER 9 (2016) (claiming that an order is not necessarily the "decisive, or even dominant, influence on the preferences and behaviors of states" or other actors).

5. *See infra* Parts II & III (reviewing interstate, United Nations-sponsored, subnational, private, and multistakeholder pledging platforms); *see also* Krishna Prasad, *The Truth Behind International Climate Agreements: Why They Fail and Why the Bottom-Up Model Is the Way Forward. A Game Theory Analysis*, 28 COLO. NAT. RES., ENERGY & ENV'T L. REV. 217, 246 (2017) ("[T]he world has begun to shift to the bottom-up formula . . . [of] pledge and review"); Maria L. Banda, *The Bottom-Up Alternative: The Mitigation Potential of Private Climate Governance After the Paris Agreement*, 42 HARV. ENV'T L. REV. 325, 327 (2018) (calling the volume of non-state pledges a "tsunami of voluntary actions").

6. While this lack of a bargained-for exchange is a feature of pledging as a formal matter, the promise may be the result of informal bargaining or interest group pressure at the domestic level. For more on this, *see infra* Part I. Analysis of treaty design choices often begins with contract law and theory. *See, e.g.*, Edye v. Robertson, 112 U.S. 580, 598 (1884) ("A treaty is primarily a compact between independent nations."); ERIC. A POSNER & ALAN O. SYKES, ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW 24 (2013) ("[F]rom an economic standpoint the international agreements that create international law are contracts."); ROBERT E. SCOTT & PAUL B. STEPHAN, THE LIMITS OF LEVIATHAN: CONTRACT THEORY AND THE ENFORCEMENT OF INTERNATIONAL LAW (2006) (arguing that contract theory explains treaty compliance).

7. This is not to understate the significant variation in forms of treaty promise, which has received substantial attention in the literature. *See, e.g.*, Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal, *The Concept of Legalization*, 54 INT'L ORG. 401

It is an individually-generated commitment,[8] made within what I call a pledging platform. The pledging platform provides the call for pledges, the standard by which pledges are to be judged, and the means of enforcement, often through reputational sanctions.[9] The pledging platform might be a formal legal structure, such as a treaty, or a parallel structure at the municipal level or in the private realm.[10] A pledge might be binding or non-binding, but this depends on the platform. The key feature of the pledge is that it is bespoke: generated by and unique to the pledgor.

Pledges, within pledging platforms, are the key method by which the world is addressing climate change—through the activity of states, municipalities, banks, philanthropists, corporations, nongovernmental organizations (NGOs), universities, and individuals.[11] Pledges also address a raft of other public problems: orbital debris, forest preservation, packaging waste, training workers in digital skills, diversity and inclusion, coral reefs, antimicrobial resistance, and amyotrophic lateral sclerosis (ALS) awareness, among a host of examples.[12]

To view this explosion of pledging activity in terms of an ordering device facilitates two conceptual moves: to conceive of pledging in both public and private contexts—and in both legal and non-legal formulations—as part of one phenomenon; and to see pledging both within and outside of the climate context as part of the same form of world order.[13] This approach is socio-legal in that it looks beyond legal texts to see law's interaction with other social facts.[14] It thus builds on traditions of legal realism as well as sociological and pluralist

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(2000) (distinguishing treaty design choices along the dimensions of obligation, precision, and delegation); Jean Galbraith, *Treaty Options: Towards A Behavioral Understanding of Treaty Design*, 53 VA. J. INT'L L. 309 (2013) (analyzing design choices from a behavioral perspective); BARBARA KOREMENOS, THE CONTINENT OF INTERNATIONAL LAW: EXPLAINING AGREEMENT DESIGN (2016) (advancing a theory of rationalist and functionalist treaty design).

8. This differs from Kal Raustiala's use of the term "pledge," which refers to a non-binding commitment, as distinguished from a binding "contract." Kal Raustiala, *Form and Substance in International Agreements*, 99 AM. J. INT'L L. 581 (2005). The key feature of the pledge as I define it is that it is individual: independently generated and non-reciprocal.

9. Reputational sanctions are a common enforcement method in international law. *See* Oona Hathaway & Scott Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252, 258 (2011) (claiming that international law is sometimes enforced through "outcasting," which involves denying the disobedient the benefits of social cooperation and membership); Andrew Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1861 (2002) (arguing that reputational sanctions are among the relevant factors explaining compliance with international law); Kish Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 908 (2018) (showing that reputational sanctions are used by both public and private actors and influence decisions by both types of actors).

10. *See infra* Parts II & III (offering the Paris Climate Agreement as the archetypal example of the pledging platform in international law and reviewing a variety of other platforms, including the World Economic Forum and its Davos Conference, the Paris Peace Forum, the Glasgow Financial Alliance for Net-Zero, the C40 Cities Initiative, the Ceres investor watchdog group, and many others).

11. *See infra* Parts II & III (reviewing these pledging sites).

12. *See infra* Part III (reviewing these pledging efforts).

13. *See infra* Part IV (collecting literature that defines an "order" and a "world order").

14. The approach places the Article within the "empirical turn" in international legal scholarship, which focuses on "midrange theorizing," or building theory from the study of facts. Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1, 1 (2012).

approaches to international law.[15]

In terms of payoffs, viewing pledging as an ordering mechanism helps bring into sharper relief the features of a larger emerging order this mechanism reflects. Current headlines offer ample evidence of the erosion of the postwar legal order.[16] But it is easier to witness the erosion of known orders than to understand the shape that newer orders are taking. This analysis offers hypotheses grounded in observation.

To briefly preview those points: the pledging world order is organized on a principle of coordinated autonomy. It departs from the postwar order characterized by top-down, multilateral legal rules. It departs, too, from the Westphalian principles of sovereignty that render sub-state and non-state entities irrelevant to the international legal order. In fact, the pledging order marks the blurring of an array of distinctions fundamental to earlier orders: public/private, law/not law, international/local, and deep/shallow methods of coordination. In their place, the pledging order substitutes loosely cooperative patterns of interaction that accommodate nationalist and populist trends toward isolationism and the current retreat from robust multilateralism. The pledging order, and its principle of coordinated autonomy, might make gains over the international legal status quo in participation and perceived legitimacy, but it suffers deficits in enforceability and does not remedy historic and structural injustices. International lawyers and other public and private actors who seek to improve this order must develop new ways to overcome those deficits.

Part I defines terms, identifying the features of a pledge as a unilaterally determined promise within a pledging architecture and distinguishing the pledge from other forms of commitment. Part II explores the emergence of the pledge within treaty law, first distinguishing it from other treaty design choices. Those

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15. *See* Gregory Shaffer, *Legal Realism and International Law*, *in* INTERNATIONAL LEGAL THEORY 82, 82 (Jeffrey Dunoff & Mark Pollack eds., 2022) (linking legal realism to sociolegal approaches to law, the authors state that "[f]or legal realists, jurisprudence should be conceived . . . in terms of how law obtains meaning, operates, and changes through practice"); Ralf Michaels, *Global Legal Pluralism*, 5 ANN. REV. L. & SOC. SCI. 243 (2009) (explaining that legal pluralism views law as a contest between competing normative orders, both publicly and privately generated). Other recent approaches that look beyond the "law on the books" to understand international law as part of a broader social context include process-based, behavioural, and critical approaches. *See, e.g.*, Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1994) (focusing on transnational networks of state and non-state actors); Monica Hakimi, *Making Sense of Customary International Law*, 118 MICH. L. REV. 1487 (2020) (taking a process-based, discursive approach to customary international law); Shaffer & Halliday, TRANSNATIONAL LEGAL ORDERS, *supra* note 4 (offering a socio-legal investigation of the rise and fall of normative orders); Harlan Cohen & Timothy Meyer, *International Law as Behavior: An Agenda*, *in* INTERNATIONAL LAW AS BEHAVIOR (Harlan Grant Cohen & Timothy Meyer eds., 2020) (collecting theories and methodologies falling within a behavioral approach to legal scholarship); B.S. Chimni, *Customary International Law: A Third World Perspective*, 112 AM. J. INT'L L. 1, 7 (2018) (elaborating a critical, "third world" perspective on international law: international rules are a product of social facts and power structures and "embody 'hegemonic' ideas and beliefs").

16. I refer to news of the Russian invasion in Ukraine, which challenges the principle of nonintervention at the core of the post-World War II rules-based international order. U.N. Charter art. 2(4) ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."); *see also* Dani Rodrik & Stephen M. Walt, *How to Build a Better Order*, 101 FOREIGN AFFS. 142 (2022) ("The global order is deteriorating before our eyes.").

choices include classic reciprocal commitments; "treaty options,"[17] including reservations and declarations; and the delegated authority in some modern framework conventions. Unlike these choices, pledging allows individual states to customize their commitment, moves that customization from the periphery to the core of the agreement, and leaves customization choices fully within the purview of individual parties. The Part then focuses on international climate law[18] as a high-profile example of this design choice.[19] It traces the emergence of pledging as a way to instantiate the global justice principle of "common but differentiated" responsibility in climate law in a way that could draw broad subscription.

Part III describes the vast pledging landscape outside of international law, offering examples of the sites in which this ordering mechanism arises, the purposes to which it is put, and the actors involved. For example, the Global Compact and related platforms use pledging as a way for public actors to enlist the help of multinational corporations to further public agendas. The World Economic Forum, Ceres, C40 Cities, the Race to Zero initiative, and the Paris Peace Forum also use pledging platforms to enlist a wide gamut of actors to try to fill governance lacunae left by the international legal system.[20] Pledgors include corporate entities, governments, municipalities, NGOs, individuals, and so on, and the targeted problems are also diverse.

Part IV lays out the Article's theoretical apparatus, explaining why it is useful to conceive of the pledging phenomenon as an ordering device that reflects a particular kind of world order. The construct allows the reader to conceptualize heterogenous pledging activity within a unified framework,[21] and

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17. Galbraith, *supra* note 7, at 309.

18. Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

19. The account is preceded by a rich literature on treaty design in international environmental law, especially Edith Brown Weiss' work observing the role of voluntary commitments in international environmental law, *e.g.*, Edith Brown Weiss, *Voluntary Commitments as Emerging Instruments in International Environmental Law*, 44 ENV'T POL'Y & L. 83, 89-90 (2014); exploring contributions to international environmental norms and standards by non-state actors, *e.g.*, Edith Brown Weiss, *The Evolution of International Environmental Law*, 54 JAPAN Y.B. INT'L L. 1, 18-21 (2011); and characterizing the international environmental context as marked by "kaleidoscopic" complexity, Edith Brown Weiss, ESTABLISHING NORMS IN A KALEIDOSCOPIC WORLD (2020).

20. For other accounts noting this gap-filling role in the climate context, *see, e.g.*, Sharmila L. Murthy, *States and Cities as "Norm Sustainers": A Role for Subnational Actors in the Paris Agreement*, 37 VA. ENV'T L.J. 1 (2019) (explaining how subnational actors contribute to the success of climate goals of Paris Agreement); Karin Bäckstrand et al., *Non-state Actors in Global Climate Governance: From Copenhagen to Paris and Beyond*, 26 ENV'T POL. 561, 568 (2017) ("The Paris Agreement accepts that NDCs submitted by states are the backbone of mitigation, adaptation, and finance, but also acknowledges that non-state actors are indispensable in these pursuits as governors, implementers, experts and watchdogs."); Hari M. Osofsky, *The Geography of Solving Global Environmental Problems: Reflections on Polycentric Efforts to Address Climate Change*, 58 N.Y.L. SCH. L. REV. 777 (2013-14) (highlighting the "multiscalar" feature of climate change and importance of cities and regional efforts in complimenting international legal efforts); *see also* Hari M. Osofsky, *Rethinking the Geography of Local Climate Action: Multi-Level Network Participation in Metropolitan Regions*, 2015 UTAH L. REV. 173, 177 (2015) (examining patterns of participation by major cities in local climate networks and offering strategies for more effective engagement by these actors).

21. Others have offered ways to conceptualize public and private climate responses within a single framework. *See, e.g.*, Weiss, KALEIDOSCOPIC WORLD, *supra* note 19 (referring to the "new

focuses analytical questions. Part V turns to those analytical questions in an initial effort to assess the pledging world order. The analysis builds on a literature examining climate pledges, which raises two principal issues I characterize as effectiveness and equity concerns.[22] The Part then broadens the aperture, arguing that this emerging world order departs in significant respects from distinctions important to earlier orders. In so doing, it constructs a means of coordination I call "coordinated autonomy," which emphasizes function over status, volunteerism over legality, social sanction over legal consequence, and cooperation over institutionalization. In so doing, this order makes a series of tradeoffs involving legitimacy, justice, participation, and legality.

The analysis offered here focuses questions about how to address global problems in conditions of nationalist isolationism, populism, global inequity, and geopolitical interdependence.[23] Developing a principled response to the pledging

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Anthropocene Epoch" as a "kaleidoscopic world" and calling for "a more inclusive public international law that accepts diverse actors in addition to States and other sources of law, including individualized voluntary commitments"). This account aims at something both wider and narrower: multi-scalar, multi-actor activity that is also trans-regime and trans-substantive, but organized according to a specific regularity: pledging, within pledging platforms. Letizia Lo Giacco suggests a different sort of response to the role of private actors in international governance: Rather than "break[ing] the frame" and "crafting new frameworks" to accommodate this activity, she advocates recentering the debate on "viable mechanisms of accountability [and] legitimacy" in either "public" or "private" realms. Letizia Lo Giacco, *Privatization and the 'Natural' Place of Public Interests in Public International Law* (unpublished manuscript on file with author).

22. *See* Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 110 AM. J. INT'L L. 288 ("The Paris Agreement falls short of putting the world on a pathway to avoiding dangerous climate change. But, given current political realities, it produced as much as reasonably could have been expected, and perhaps more."); *see also* Jutta Brunée, *International Environmental Law and Climate Change: Reflections on Structural Challenges in a "Kaleidoscopic" World*, 33 GEO. ENV'T L. REV. 113 (2020) (observing that the Paris Agreement "ultimately amounts to an effort to square the international legal circle: it seeks to overcome sovereignty-based impediments to treaty development by affirming—and harnessing—states' sovereign freedom to determine their own national climate policy"); Noah M. Sachs, *The Paris Agreement in the 2020s: Breakdown or Breakup?*, 46 ECOLOGY L.Q. 865 (2019) (claiming that due to lack of enforcement mechanisms, agreement is "fragile and prone to defections"); Cary Coglianese, *Pledging, Populism, and the Paris Agreement: The Paradox of a Management-Based Approach to Global Governance*, 34 MD. J. INT'L L. 139, 141 (2019) (noting that structural limitations come from standard international cooperation problems); Kasturi Das et al., *Making the International Trade System Work for Climate Change: Assessing the Options*, 49 ENV'T L. REV. 10553 (2019) (raising free rider concerns); Cinnamon P. Carlarne & JD Colavecchio, *Balancing Equity and Effectiveness: The Paris Agreement & the Future of International Climate Change Law*, 27 N.Y.U. ENV'T L.J. 107, 111 (2019) (exploring equity concerns).

23. A growing literature tries to think imaginatively and expansively about the future possibilities of the international legal order in these conditions of challenge, particularly at the intersection of environmental and economic challenges. There are many possible works to reference here, but a few examples include Anthea Roberts & Jensen Sass, *The New Resilience Paradigm*, PROJECT SYNDICATE (Aug. 18, 2022), https://www.project-syndicate.org/commentary/productivism-offers-only-partial-response-to-neoliberal-decline-by-anthea-roberts-and-jensen-sass-2022-08 (observing and endorsing a "resilience" policy framework to address "growing ecological risks and geostrategic competition"); Harlan Grant Cohen, *What is International Trade Law For?*, 113 AM. J. INT'L L. 326, 346 (2019) (advocating for a "re-embedded liberalism based around a state's obligation to provide for its own people" in international trade policy); Steve Charnovitz, *A WTO If You Can Keep It*, Q. INT'L L. (Nov. 30, 2019) (arguing that the "state-centricity" of the WTO keeps it from effectively solving collective action and global public goods problems and that a revitalized organization would institutionalize a role for nonstate actors); *see also* Nico Krisch, *The Decay of Consent: International Law in an Age of Global Public Goods*, 108 AM. J. INT'L L. 1 (2014) (claiming that consensual international law is not capable of responding to global public goods problems and that nonconsensual forms hold more promise).

world order—designing the future order rather than drifting into it—will require leaning into the possibilities of this order, or rejecting it for something better.

I. PLEDGES AND PLEDGING PLATFORMS

A pledge, for the purposes of this analysis, is a promise that is independently generated by the promisor. There are two aspects to this definition: first, the pledge is a *promise*, and second, the content of the promise is *unilaterally determined*, rather than agreed upon by a number of parties.

The first half of this definition reflects standard usage. A pledge, according to Merriam Webster, is "a binding promise or agreement to do or forbear."[24] The Oxford English Dictionary definition includes a sense of solemnity. To pledge is to "[b]ind by a solemn promise," or to "[g]uarantee the performance of; undertake to give," or simply to "[p]romise solemnly (*to* do something)."[25] In law, the concepts of "pledge" and "promise" have sometimes diverged, but the two have largely remained interchangeable.[26]

This analysis embraces the conventional idea that a pledge is a "promise . . . to do something."[27] It then adds a second aspect to the definition: States or other actors offer "pledges" when they independently determine what it is that they promise to do, rather than negotiating about those commitments as a group, and committing to a common promise. It is not formally reciprocal, or a part of a formal bargained-for exchange. It is bottom-up rather than top-down. A pledge is an individual commitment by an actor to do something within a larger pledging platform. The promisor decides on the substantive content of the pledge.

Granted, although pledges are formally non-reciprocal, they may be the product of informal bargaining. For example, in international law, pairs or groups of states may negotiate the content of commitments between themselves before making a pledge. It was widely reported that the United States and China made informal emissions reductions agreements between themselves prior to the Paris Climate Conference.[28] It was only after that conference that the two

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24. *Pledge*, MERRIAM WEBSTER DICTIONARY 952 (11th ed. 2020).

25. *Pledge*, OXFORD ENGLISH DICTIONARY 1036 (2d ed. 1989).

26. Inquiries into the legal status of voluntary pledges have a long history. *See, e.g.*, John H. Wigmore, *The Pledge-Idea: A Study in Comparative Legal Ideas*, 10 HARV. L. REV. 321, 322-23 (1897) (noting that the concepts of "pledge, forfeit, and promise," were originally the same idea). In 1897, a "promise" had come to mean that a transaction was only provisionally settled," *id.* at 323, whereas a "pledge," meant a transfer of rights, *see id.* at 324-25. Nearly 150 years later, the meaning of the term "pledge" is once again eliding with "promise."

27. *See* OXFORD ENGLISH DICTIONARY, *supra* note 25 (emphasis omitted). Some scholars have used the term "pledge" in international law to identify promises that are non-binding, and to distinguish these from contractual promises, which are binding. *See, e.g.*, Raustiala, *supra* note 8, at 581. This Article adopts a slightly different use that is equally supported by common usage. The point is not to distinguish between binding and non-binding promises, but to identify promises that are independently generated, rather than uniform and negotiated.

28. *See, e.g.*, Joby Warrick, *In Secret Talks, U.S., Chinese Officials Found Common Ground on Climate*, WASH. POST (Nov. 12, 2014), https://www.washingtonpost.com/national/health-science/in-secret-talks-us-chinese-officials-found-common-ground-on-climate/2014/11/12/30d70c12-6abb-11e4-a31c-77759fc1eacc_story.html (reporting on "a largely secret 1½-year journey that led to Wednesday's

countries formalized their agreements in pledges.[29] Moreover, pledging by states at the international level will often be the product of bargaining at the domestic level. In other pledging contexts outside of international law, pledges may also be the result of shadow bargaining or reputational pressure that pushes parties toward common targets. The key is that the pledge is an individually generated response to a call for pledges. It is a customized commitment made within a larger framework of cooperation.

This framework of cooperation is the architecture within which the pledge is made; I will call this a "pledging platform." In international law, this is the treaty. Other platforms are developing in international, subnational, multistakeholder, and non-public arenas as well.[30] The pledging platform provides the "call" for pledges, the definition of the goal to which the pledges should be directed, and any standards by which the adequacy of the pledges will be judged.[31] The platform usually offers some apparatus to collect the pledges and maintain records of them. It sometimes publishes these pledges to celebrate progress, attract more subscribers, or facilitate accountability through reputational sanctions. The pledging platform often demands other acts in connection with the pledge: progress reports, "accounting" for compliance or noncompliance, or subsequent pledges expressing greater ambition.

A pledge, made within a pledging platform, can fall within the broader category of "soft law" when it is made by lawmakers, like states, but is non-binding.[32] Indeed, there is a robust literature on soft law that defines treaty commitments by their degree of legality—or bindingness—and considers the utility of non-enforceable commitments.[33] While commitments I am identifying as "pledges" can fall within the rubric of "soft law" when they are non-binding,[34] pledges are not by necessity non-binding. This depends on the stipulations of the platform itself. My use of the term "pledge" directs attention to another feature of these commitments: that they are independently generated. While a treaty or

landmark U.S.-Chinese pact to scale back greenhouse-gas emissions"); Mark Landler, *U.S. and China Reach Climate Accord After Months of Talks*, N.Y. TIMES (Nov. 11, 2014), https://www.nytimes.com/2014/11/12/world/asia/china-us-xi-obama-apec.html (same); *see also* Press Release, Office of the Press Sec'y, The White House, U.S.-China Joint Announcement on Climate Change (Nov. 11, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change (reporting on the U.S.-China agreement).

29. Press Release, Office of the Press Sec'y, The White House, U.S.-China Joint Presidential Statement on Climate Change (Mar. 31, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/03/31/us-china-joint-presidential-statement-climate-change (reporting on the joint decision of the United States and China to sign and join the Paris Agreement).

30. *See generally infra* Part III (identifying pledging platforms in various contexts outside international law).

31. For examples, *see infra* Sections II.A.1, II.B.3, and II.B.4 and Part III.

32. *See* Timothy Meyer, *Alternatives to Treaty Making — Informal Agreements*, *in* THE OXFORD GUIDE TO TREATIES 59, 60-61 (2d ed. 2020) (noting that authors often use the term "soft" law to describe agreements that are not binding under international law).

33. *See, e.g.*, Abbott et al., *supra* note 7, at 403 (offering bindingness as one of three features that can make law "soft," along with vagueness and delegation); *see also* Meyer, *supra* note 32, at 60-61 (collecting literature).

34. MALGOSIA FITZMAURICE & PANOS MERKOURIS, TREATIES IN MOTION: THE EVOLUTION OF TREATIES FROM FORMATION TO TERMINATION 82-87 (2020) (collecting literature).

other platform may provide a structure for the promises, the content of the promises themselves can be heterogeneous.

A pledge is thus an *independently generated promise that takes place within a pledging platform*, such as a treaty. The pledging platform is the organizing infrastructure, which calls for pledges and provides the publicity that might facilitate enforcement through reputational sanctions.[35] The next Part illustrates the concept by describing pledging in international law, evaluating pledging as a treaty design choice and tracing its emergence in climate law.

II. PLEDGING IN INTERNATIONAL LAW

In international law, pledging functions as a treaty design choice. This Part identifies features of that choice and distinguishes them from other treaty methods. It traces the development of this treaty method in climate law, and then investigates other actual and prospective uses of this treaty design choice outside of climate law.

A. As a Treaty Design Choice

Pledging departs from the contractual reciprocity, or bargained-exchange feature of a classic treaty promise, as well as the customization of obligations facilitated by reservations and declarations. Pledging is also substantively different from the approach of some contemporary framework treaties that delegate authority to bodies or smaller committees of the whole. Rather, pledging produces a form of coordinated autonomy: high customizability of commitment within a negotiated framework.

1. Illustration: The Paris Pledge

The Paris Climate Agreement is a high-profile example of pledges and the pledging platform in international law.[36] Consider the structure of the pledging platform. First, it calls for pledges. Parties have agreed to the following core commitment in Article 4, paragraph 2:

> Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.[37]

In plain English, this means that the parties decide what climate mitigation measures they will take and what their commitment under the treaty will be. For example, the United States' first nationally determined contribution—its first pledge—after joining the Paris Agreement was to achieve twenty-six to twenty-eight percent greenhouse gas emissions reductions below 2005 levels in 2025.[38]

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35. *See supra* note 9 (reviewing literature on reputational sanctions).

36. Paris Agreement, *supra* note 18.

37. *Id.* art. 4.2.

38. U.S. Cover Note INDC and Accompanying Information, INDCs as Communicated By Parties (Mar. 31, 2015), https://unfccc.int/files/focus/indc_portal/application/pdf/u_s_cover_note_indc_and_accompanying_information.pdf.

Other parties made pledges that reflected their own national circumstances. While some countries also pledged emissions reductions (*e.g.*, Canada pledged to reduce emissions by thirty percent below 2005 levels by 2030[39]), other countries made substantially different pledges. For example, China pledged to increase the share of non-fossil fuels in primary consumption to twenty percent by 2030,[40] and Nigeria pledged economic growth and equal access to electricity for all citizens by 2030.[41] These nationally determined contributions comprise the substantive core of the Paris Agreement. That is, it is through these pledges that the parties mean to do something about the problem that the treaty is meant to solve.

The pledge, as defined in this Article and as exemplified in the Paris Climate Agreement, is a non-reciprocal, independently generated promise. But that is not to say that the pledge is free from any context of reciprocity or bargaining. Parties made these Paris commitments with the expectation that other parties would also submit pledges, and, theoretically at least, ones reflecting their "highest possible ambition."[42] The pledges were made after shadow bargaining not embedded in the structure of the treaty, such as the informal agreement between the United States and China to pledge emissions reductions, discussed earlier.[43] Indeed, many parties had announced intended pledges before the Paris Climate Conference.[44] The pledges were also made after formal bargaining at the Paris Conference, which established the structure within which those pledges would be made—what I am calling the "pledging platform."

Negotiating parties agreed on the terms of this platform: Pledges must be made every five years;[45] they must be communicated[46] and publicly recorded;[47] successive pledges are meant to "represent a progression" beyond previous

39. Emily Green & Phelps Turner, *Is Canada Living Up to Its Global Climate Commitments?*, 33 NAT. RES. & ENV'T 35, 35 (2018) ("Canada submitted an NDC under which it committed to reducing its GHG emissions by 30 percent below 2005 levels by 2030.").

40. Yi Qi et al., *China's Peaking Emissions and the Future of Global Climate Policy*, BROOKINGS-TSINGHUA CTR. PUB. POL'Y 2 (2018), https://www.brookings.edu/wpcontent/uploads/2018/09/Chinas-Peaking-Emissions-and-the-Future-of-Global-Climate-Policy.pdf.

41. U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, NIGERIA'S NATIONALLY DETERMINED CONTRIBUTION 4-5 (2021), https://unfccc.int/sites/default/files/NDC/202206/NDC_File%20Amended%20_11222.pdf.

42. Paris Agreement, *supra* note 18, art 4.3.

43. *See supra* note 28 and accompanying discussion.

44. These were expressed as "intended nationally determined contributions" (INDCs). *See* DANIEL BODANSKY, JUTTA BRUNNEÉ & LAVANYA RAJAMANI, INTERNATIONAL CLIMATE CHANGE LAW 215 n.15 (2017) (noting that parties had submitted 154 INDCs before the Paris conference began).

45. Paris Agreement, *supra* note 18, art. 4.9.

46. *Id.* arts. 3, 4.2, 4.8.

47. *Id.* art. 4.12.

pledges;[48] pledges must "reflect [a party's] highest possible ambition";[49] and parties must "account" for whether or not they have achieved their pledge.[50] These commitments form the infrastructure within which the pledges are made.

2. *Pledge v. Other Treaty Promises*

In one sense, this pledging format is no different from any other way of making international law. After all, international law is made up of a web of solemn promises. The model, in its most formal terms, is contractual.[51] States agree by treaty to be bound, and one of the most fundamental principles of international law is *pacta sunt servanda*, the principle that agreements must be kept.[52]

Despite these points of regularity, pledging is a distinct phenomenon in international law. Compare pledging with the constitutional commitments of the United Nations Charter, such as: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[53] Pledging is also different from a common type of lawmaking in the human rights arena, where states settle on a list of rules to which they all agree and commit to implementing in domestic law. For example, Article 9 of the Convention on the Rights of the Child provides that "States Parties shall ensure that a child shall not be separated from his or her parents against their will."[54] The commitment is common to all parties, though it permits various forms of interpretation and implementation.

These examples reflect the standard postwar method of doing international law. States gather to hammer out the details of large, multilateral treaties that articulate common commitments. Individual national parties bring these commitments home for the domestic processes that will allow those states to commit to the treaty. That practice has been maintained alongside bilateral and regional agreements that deal with specific matters, like common borders and

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48. *Id.* art. 4.13; *see, e.g.*, Press Release, White House, Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (Apr. 22, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies (noting that, for a subsequent pledge, the United States ratcheted up its ambition, setting a new goal of reduction in emissions by fifty to fifty-two percent below 2005 levels in 2030).

49. Paris Agreement, *supra* note 18, art 4.3.

50. *Id.* art. 4.13. Lavanya Rajamani and Jutta Brunnée argue that it is through these features, which I call the "platform" terms, that the Paris commitments come to bind parties to action. Lavanya Rajamani & Jutta Brunnée, *The Legality of Downgrading Nationally Determined Contributions Under the Paris Agreement: Lessons From the US Disengagement*, 29 J. ENVT'L L. 537 (2017) ("[W]hile NDCs as such are not legally binding, they are subject to binding procedural requirements and to normative expectations of progression and highest possible ambition").

51. *See generally* POSNER & SYKES, *supra* note 6, at 24 (asserting that state cooperation through international agreements is analogous to private actor cooperation through contracts).

52. *See* I. I. Lukashuk *The Principle* Pacta Sunt Servanda *and the Nature of Obligation Under International Law* 83 AM. J. INT'L L. 513, 513 (1989) (defining the obligation to mean that "treaty obligations must be fulfilled in good faith").

53. U.N. Charter art. 2(4).

54. Convention on the Rights of the Child art. 9, ¶ 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

regional resources.

Pledging is different. Parties agree on the aspirational commitment—the ideal resolution of the problem—and then bind themselves by treaty to proffering a pledge.

3. Pledge v. Reservation

Standard treaty practice, as described in the prior section, has eroded since almost the beginning of the postwar order. One of the first challenges was posed by reservations. A reservation is a carve-out provision: a unilateral statement a state makes when it joins a treaty that purports to exclude or modify certain provisions of the treaty for that state.[55] Reservations are "treaty options"[56]—a method states can use to customize their treaty commitments. Reservations are in some sense forbears of the pledging architecture, though, again, pledging is different.

In the League of Nations system, prior to the Second World War, reservations were subject to the "unanimity rule,"[57] which was "directly inspired by the notion of contract."[58] The rule focused on the integrity of the treaty bargain and consent by the contracting states.[59] Under this rule, a reservation would be accepted only if all parties to the treaty assented to it, and the reservation would then limit the treaty commitment for all parties.[60] If it was not unanimously accepted, the reservation would be null and void.[61]

The modern approach is more flexible.[62] Reservations are permitted in principle unless parties explicitly prohibit them in the text of the treaty.[63] If a state submits a reservation, it is up to each other state party to "appraise the validity of the reservation . . . individually and from its own standpoint."[64] An objecting state will not be bound by the reservation, vis-à-vis the reserving

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55. Vienna Convention on the Law of Treaties art. 2(1)(d), May 23, 1969, 1155 U.N.T.S. 331, 333 [hereinafter Vienna Convention].

56. Galbraith, *supra* note 7, at 309.

57. Malgosia Fitzmaurice & Agnes Rydberg, *Derogations and Reservations in International Law*, OXFORD BIBLIOGRAPHIES, available at https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0223.xml (last visited Sept. 8, 2022).

58. Reservations to Convention on Prevention and Punishment of the Crimes of Genocide, Advisory Opinion, 1951 I.C.J. 15, 26 (May 28).

59. *See id.* (offering these justifications for the rule).

60. Fitzmaurice & Rydberg, *supra* note 58.

61. *Id.*

62. This approach came out of a challenge early in the postwar order when the U.N. General Assembly sought universal subscription to a treaty outlawing genocide. Despite no language in the treaty regarding reservations, some states submitted them, whereupon the General Assembly asked the International Court of Justice (ICJ) to opine on whether these reservations were permissible. Reservations to Convention on Prevention and Punishment of the Crimes of Genocide, Request for Advisory Opinion, Leg. 46/05 (Nov. 17, 1950). In its 1951 advisory opinion, the ICJ rejected the unanimity rule, adopting a more flexible approach that provides that when a treaty is silent, a state may attach reservations insofar as they are compatible with the object and the purpose of the treaty. Reservations to Convention on Genocide, *supra* note 58. The Vienna Convention on the Law of Treaties adopted the ICJ's more flexible approach. *See* Vienna Convention, *supra* note 55, art. 2.

63. Fitzmaurice & Rydberg, *supra* note 58; *see also* Vienna Convention, *supra* note 55, art. 20.

64. Reservations to Convention on Genocide, 1951 I.C.J. at 26.

state.[65] If it does not object, the reservation will modify the treaty bargain for both the reserving and non-objecting state.[66]

Reservations allow treaty customization; in this way treaty reservations are precursors to the pledging format. They allow states to carve out exceptions to the common rule. When reservations are permitted, the treaty architecture can become a web of bilateral bargains between different states. To understand the obligations that bind each state vis-à-vis other treaty parties, one must know what reservations that state has made, what reservations other states have made, and whether the first state has objected to any of those reservations, or objected to the treaty entering into force between it and any of those other parties.[67] Rather than a uniform contract or legislative enactment, the treaty is a network of commitments.

Pledges flip the script. Rather than forming exceptions to the common rule, the pledging architecture sets out an aspirational goal and requests that states make promises to commit to it through individualized commitments. The pledging treaty is not a web of bilateral agreements, but rather a platform hosting individually defined commitments. If reservations make a treaty a network or a web, a pledging treaty is a clearinghouse, a warehouse, or a recording office.

4. *Pledge v. Declaration*

Declarations are also worth a brief mention. Like reservations, declarations made by treaty parties can customize a treaty commitment for the declaring party. Unlike with reservations, the difference between treaties authorizing declarations and pledging treaties is a matter of degree.

A declaration is a statement "purport[ing] to specify or clarify the meaning or scope of a treaty or certain of its provisions."[68] There are three varieties: Interpretive declarations "explain to other parties what the State understands its obligations to be," but do not formally modify or exclude the treaty's provisions as to the declaring party.[69] Optional declarations allow for more customization—they permit states to "assume additional or different commitments" than they would have assumed without a declaration.[70] Finally, mandatory declarations require states joining the treaty to offer information or specify how the joining state will perform the treaty.[71] For example, an agreement relating to children in

65. Vienna Convention, *supra* note 55, art. 20 ¶ 4(b).

66. *Id.* art. 21. Treaties now take different approaches. Some, like the United Nations Convention on the Law of the Sea, provide that reservations may not be made, but many others permit them. United Nations Convention on the Law of the Sea art. 309, Dec. 10, 1982, 1833 U.N.T.S. 397.

67. *See generally* Vienna Convention, *supra* note 55, arts. 19-21 (regulating effect of reservations and objections to them).

68. Edward T. Swaine, *Treaty Reservations*, *in* THE OXFORD GUIDE TO TREATIES 285, 287 (D. Hollis ed., 2d ed. 2020) (quoting International Law Commission, *Guide to Practice on Reservations of Treaties* ¶ 1.2 (2011)).

69. *Id.*

70. THE OXFORD GUIDE TO TREATIES 684-85 (D. Hollis ed., 2d ed. 2020) (offering, as an example, that a party to the Rome Statute can declare that they do not accept the jurisdiction of the court over certain crimes committed by its nationals or on its territory).

71. *Id.* at 684.

armed conflict requires states that ratify or accede to the treaty to "deposit a binding declaration . . . that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces."[72] The point, for our purposes, is that optional and mandatory declarations, like reservations, can create a bargain with customized commitments.

How does a treaty authorizing such declarations differ from a pledging treaty? The difference is a matter of degree. In the context of treaties permitting or requiring declarations, the core treaty promises are negotiated. Declarations typically customize the agreement only on the margins. Parties can make individual choices as to specific matters like dispute resolution, or the territorial scope of a state's commitments, but the core substantive agreements are common and negotiated. Pledging moves the customization from the margins to the core of the agreement.

5. *Pledge v. Delegation*

The prior sections defined pledging by contrasting it with traditional negotiated treaty commitments, and with exceptions to those commitments (reservations) and customizations of them (declarations). Another way to understand the unique features of pledging is to contrast this lawmaking approach with another contemporary form of international cooperation: delegation "to an international body to make decisions or take action."[73]

Unlike standard commitments, as earlier described, where states "promise to behave in certain ways," delegations are agreements by which states grant authority to a conference of the parties, organization, or other body.[74] Curtis Bradley and Judith Kelley give the example of the Organization for the Prohibition of Chemical Weapons:

> [W]ithin the Organization for the Prohibition of Chemical Weapons, the Conference of Parties can make decisions on matters of substance by a two-thirds majority. Its responsibilities include approving draft agreements, provisions, and guidelines developed by the Organization's Preparatory Commission. Additionally, the Conference of Parties oversees enforcement of the Chemical Weapons Convention and has authority to "take the necessary measures to ensure compliance and to redress and remedy any situation which contravenes the provisions of this Convention."[75]

Thus, the Chemical Weapons Convention departs from the Westphalian system of absolute consent to embrace a system of delegated authority where a subset of the whole takes on legislative, agenda-setting, monitoring,

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72. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict art. 3(2), May 25, 2000, 2173 U.N.T.S. 237.

73. Curtis A. Bradley & Judith G. Kelley, *The Concept of International Delegation*, 71 LAW & CONTEMP. PROBS. 1, 2 (2008).

74. *Id.* at 3.

75. *Id.* at 8 (citing Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction art. VIII, ¶ B(21)(k), Jan. 13, 1993, 32 I.L.M. 800, 1974 U.N.T.S. 45).

enforcement, and other forms of authority.[76] Delegation of various kinds of authority to various bodies is now familiar in the international system and provides an alternative model to classic modes of cooperation where all commitments are negotiated and agreed upon by all parties.[77]

Pledging is a third approach. Contrast it with delegation: Agreements that delegate are highly cooperative. They relinquish absolute sovereign authority, devolving some authority to a smaller group of states or a body. Classic agreements are moderately cooperative: States negotiate and agree on a common set of rules. Pledging is the least cooperative of the three: States relinquish no authority, whether to a subsidiary body or in a negotiated process; rather, they decide only for themselves. If the delegated approach offers parallels to a global administrative state, the pledging approach shows a retreat to sovereign independence and a more minimal form of cooperation, which I call "coordinated autonomy."

B. In Climate Law

In formal international law, one high-profile incubator for the pledging treaty format is the international legal regime to confront climate change. The following discussion reviews how pledging developed in this context, which will offer groundwork for an assessment of its prospects in other contexts and its potential significance as a lawmaking model.

In international environmental law, pledging has its roots in a deeply entrenched debate about the respective responsibilities of fully-industrialized, partially-industrialized, and developing countries. Pledging is the logical extension of the "common but differentiated" principle, an international justice principle aimed at addressing longstanding North-South inequities.[78] Specifically, developing states have been reluctant to accept requirements in climate change treaties that would frustrate their path to development and poverty alleviation.[79] For developing states, this is not only a matter of fundamental human rights, but also of justice: Industrialized states are principally responsible for the greenhouse gas emissions that have already

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76. *See id.* at 10 (identifying these and other forms of delegated authority). The whaling regime is another example. The 1946 International Convention for the Regulation of Whaling (the "Whaling Convention") was intended to "provide for the proper conservation of whale stocks," International Convention for the Regulation of Whaling Preamble, Dec. 2, 1946, 161 U.N.T.S. 76, 338 U.N.T.S. 366, and did this principally by setting up an institution: the International Whaling Commission. *Id.* art. III. The Commission is charged with studying whale populations, receiving reports from member states, and periodically updating whaling regulations by amending a regulatory "Schedule" created by the original treaty. *Id.* arts. IV & V. Each party to the treaty receives one seat on the Commission, with one vote per seat. *Id.* art. III(1). Decisions are taken by a majority, with amendments to the Schedule requiring a three-quarters majority vote. *Id.* art. III(2). While states have the right to opt out of decisions of the Commission, they are deemed to have consented if they do not opt out within ninety days. *Id.* art V(3).

77. *See* Bradley & Kelley, *supra* note 73, at 36 ("International delegations are a significant and growing component of international relations.").

78. *See* PHILIPPE SANDS ET AL., PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 244 (4th ed. 2018) (tracing the development of the principle as an application of equity in international environmental law).

79. Jacob Werksman, *Remarks on The International Legal Character of The Paris Agreement*, 34 MD. J. INT'L L. 343, 351-52 (2019).

occurred and, so, they should bear principal responsibility for sacrifices to curb further damage.[80]

The "common but differentiated" principle is a way to bring all parties to the table. The idea is that all parties bear a "common" responsibility to address climate change, but that obligation is "differentiated" according to the economic capacity of each party.[81] As the next sub-sections show, pledging is a product and logical extension of this principle in climate law.

1. The UNFCCC

The 1992 United Nations Framework Convention on Climate Change (UNFCCC) implemented the "common but differentiated" principle by dividing parties into four categories and assigning obligations that are keyed to specific categories of parties.[82] For example, "all Parties" must make national-level plans to mitigate climate change, promote climate knowledge exchange, and communicate about their climate plans.[83] "Annex I" countries, which include all industrialized country parties, bear an additional obligation to mitigate greenhouse gas emissions in a way that "tak[es] the lead" and to report on their progress.[84] Additional categories include "Non-Annex I" (non-industrialized parties) and "Annex II" (industrialized, but excluding the former Soviet bloc), which each bear their own "differentiated" obligations.[85]

The UNFCCC also initiated a pledging framework. It required that "all parties . . . [f]ormulate, implement, publish and regularly update . . . programmes containing measures to mitigate . . . and . . . to facilitate adequate adaptation to climate change."[86] Specifically, parties agreed to prepare and communicate a "general description of steps taken or envisaged by the Party to implement the Convention,"[87] and developed country parties agreed to account for their performance.[88] The UNFCCC Secretariat was instructed to make these plans and reports publicly available upon submission.[89]

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80. *See, e.g.*, Jennifer Huang, *Climate Justice and The Paris Agreement*, 9 J. ANIMAL & ENVT'L L. 23 (2017); Megan Mills-Novoa & Diana M. Liverman, *Nationally Determined Contributions: Material Climate Commitments and Discursive Positioning in The NDCs*, WIREs CLIMATE CHANGE 2019 10:e589 (2018). Moreover, the developing world has sought financial assistance from industrialized countries under the rubric of "loss and damage" to compensate them for climate harms they will incur, for which they hold the industrialized world responsible. *See* Wil Burns, *Loss and Damage and The 21st Conference of the Parties to The United Nations Framework Convention on Climate Change*, 22 ILSA J. INT'L & COMP. L. 415, 424 (2016); *see also* Paris Agreement, *supra* note 18, art. 8.

81. *See* SANDS ET AL., *supra* note 78, at 244.

82. United Nations Framework Convention on Climate Change art. 4, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC]. Note that I am including "all parties" as a fourth category, alongside the "Annex I," "Non-Annex I," and "Annex II" categories.

83. *Id.* art. 4, ¶ 1.

84. *Id.* art. 3, ¶ 3; 4, ¶¶ 2(a) & (b).

85. *Id.* art. 4, ¶¶ 3, 4, 5.

86. *Id.* art. 4, ¶ 1(b).

87. *Id.* art. 12, ¶ 1(b).

88. *Id.* art. 12, ¶ 3.

89. *Id.* art. 12, ¶ 10.

2. *The Kyoto Protocol*

The Kyoto Protocol, negotiated five years later, moved away from the UNFCCC's pledging framework.[90] Kyoto kept the annex system but moved to a top-down, negotiated obligation for each tier of states.

For example, while the UNFCCC had required that Annex I countries "take the lead" in addressing climate change,[91] the Kyoto Protocol rendered that promise more concrete with negotiated targets and timetables. Annex I countries agreed to commitments that would "reduc[e] their overall emissions . . . by at least 5% below 1990 levels" during the five-year period between 2008 and 2012.[92] Accordingly, the United States agreed to lower its emissions by seven percent below 1990 levels, and most European countries agreed to eight percent below 1990 levels.[93] Unlike with the earlier UNFCCC framework and the later Paris pledges, these emissions reductions agreements were not individually determined. The exception proves the rule: Countries in the former Soviet bloc were permitted to choose a different baseline year.[94]

The Kyoto Protocol immediately faced challenges. After a change in presidential administration, the United States rejected it and did not ratify it. Canada withdrew. China never accepted an emissions target. The literature suggests that Kyoto's failures may have catalyzed the shift to the Paris Agreement's fully bottom-up pledging format.[95]

3. *The Paris Agreement*

The Kyoto approach failed to attract the commitment of important global emitters—a crucial roadblock in climate stabilization efforts. To get around this obstacle required a return to the UNFCCC pledging framework, and an elaboration of that model.

At the Copenhagen climate conference in 2009,[96] the idea crystallized: Rather than have a top-down architecture where states commit within parameters keyed to their predetermined status on an annex, why not accommodate the circumstances of each state party?[97] Each country could "make a commitment based on factors such as their economic status and their historical contribution to climate change"—industrialized countries should "accept mandatory

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90. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 148 [hereinafter Kyoto Protocol].

91. UNFCCC, *supra* note 82, art. 3, ¶ 1.

92. Kyoto Protocol, *supra* note 90, art. 3, ¶ 1. These commitments were listed on an annex to the treaty, each expressed as a percentage of greenhouse gas reductions from the base year. ("United States: 93," "Germany: 92," "Ukraine: 100.") *Id.* Annex B.

93. *Id.* Annex B.

94. *Id.* art. 3, ¶ 6.

95. *See, e.g.*, Prasad, supra note 5, at 245-54 (making this point).

96. *Copenhagen Climate Change Conference — December 2009*, UNITED NATIONS CLIMATE CHANGE, https://unfccc.int/process/conferences/pastconferences/copenhagen-climate-change-conference-december-2009/statements-and-resources/outcome-of-the-copenhagen-conference (last visited Feb. 25, 2022).

97. *See* DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 660 (6th ed. 2022) (reviewing this negotiating history).

emissions caps, while developing countries might choose from a wide range of policy options"—and then these pledges could be reviewed and reassessed at regular intervals.[98] The Copenhagen conference did not produce a treaty.[99] But the pledging architecture was popular,[100] and here to stay.

After Kyoto and Copenhagen, and in the lead up to Paris in 2015, many states agreed that the next climate agreement should be both binding and universal. Pledging proved to be the way to do this. The prior Part previewed the Paris pledging architecture, which includes a common goal;[101] a call for pledges in support of that goal, using the mandatory "shall";[102] a requirement that parties offer subsequent pledges with increasing ambition;[103] and accountability measures.[104]

The Paris Agreement also constructed a robust pledging platform to nurture and display these pledges. Pledges are to be recorded in a public registry;[105] parties are to report on their progress with respect to their pledges;[106] and they are to periodically and collectively "take stock" of their progress, with the first "global stocktake" to take place in 2023, and then to recur every five years.[107] The taking-stock exercise is meant to encourage parties to increase the ambition of their pledges.[108]

The key point to emphasize here is that the Paris pledging architecture builds on everything that came before it in international climate law: It allows each party to decide for itself what responsibility it will take for the common problem. Parties are no longer differentiated in a top-down way, grouped according to their respective industrialization timelines, but now differentiated

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98. *Id.* (noting that this proposal was known as a "'pledge-and-review'" structure).

99. *Id.* at 661.

100. *Id.* (reporting that while Copenhagen did not produce a binding agreement, it did produce a non-binding political statement, which drew voluntary pledges from eighty-five countries).

101. Paris Agreement, *supra* note 18, art. 2, ¶ 1(a) (aiming to "[h]old[] the increase in the global temperature well below 2 °C"); art. 4.1 (arguing that pledging should "achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century").

102. *Id.* art. 4.2 ("Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.").

103. *Id.* art. 4.3 ("Each Party's successive nationally determined contributions will represent a progression beyond the Party's then current nationally determined and represent its highest possible ambition . . ."); art. 3 ("The efforts of all Parties will represent a progression over time.").

104. *Id.* art. 4.2 (requiring parties to "communicate" their nationally determined contributions); art. 4.9 ("Each Party shall communicate a nationally determined contribution every five years."); art. 4.8 (requiring parties to ensure that their nationally determined contributions are clearly communicated); art. 4.12 ("Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat."); art. 4.13 (requiring parties to "account" for their nationally determined contributions); art. 14.2 (requiring parties to periodically and publicly take stock of their collective progress).

105. *Id.* art. 4.12.

106. *Id.* art. 4.13.

107. Paris Agreement, *supra* note 18, arts. 14.1 & 14.2.

108. *Id.* art. 14.3 ("The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement.").

from the bottom up, according to their own perceived "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."[109] Thus, some might characterize the Paris pledging architecture as the fullest realization of the "common but differentiated" responsibility principle; others as a sign of its decay and decline.[110]

Perhaps unsurprisingly, the pledging platform was popular. Paris obtained nearly universal subscription, with 192 nations joining the agreement,[111] representing ninety-seven percent of global emissions.[112] Almost all parties announced a pledge as promised.[113] Nevertheless, despite this wide subscription, the first pledges were "clearly insufficient to put the world on track to meet the 2-degree Celsius temperature goal."[114] Even if all countries fulfill their initial pledges, scientists predict temperatures of between 2.5 and 3.7 degrees Celsius within the century.[115] The gap between the two-degree Celsius goal and these hotter outcomes has come to be known as the "ambition gap."[116]

4. The Glasgow Pledges

Glasgow serves as a coda to Paris. It offers a glimpse into how the Paris pledging framework is working in practice. The Paris Agreement stipulated that parties should "communicate" their pledges every five years.[117] While the first five-year period ended in 2020[118] during the pandemic, the postponed conference convened in November 2021 in Glasgow. It took place in the context of "significant (and sometimes devastating) impacts from climate change,"

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109. *Id.* art. 4.3. Note that parties are still differentiated in that developed parties are meant to "continue taking the lead by undertaking economy-wide" emission reductions, while developing parties are meant to "continue enhancing their mitigation efforts" with the encouragement to "move over time towards economy-wide emission reduction or limitation targets." *Id.* art. 4.4. They are also entitled to support for these efforts. *Id.* art. 4.5. One of the national circumstances that had prompted this model was the United States' inability to pass a climate treaty in the U.S. Senate. A pledging architecture, however, made it possible for the United States to join the treaty because it allowed the executive branch to use its own authority to pledge and adopt domestic policies to fulfill the pledge without involving the Senate in a treaty ratification process. Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L. REV. 1201, 1248-52 (2018); *see also* Jean Galbraith, *The Legal Structure of the Paris Agreement*, REGUL. REV. (Dec. 21, 2015), https://www.theregreview.org/2015/12/21/galbraith-legal-structure-paris-agreement ("The international legal obligations imposed by the Paris Agreement [had to] be ones that, in the view of U.S. executive branch lawyers, the United States [was permitted to] join through sole Presidential action without needing the approval of the Senate or Congress.").

110. *See infra* Section V.A.2 for a return to this point.

111. *The Paris Agreement*, UNITED NATIONS, https://www.un.org/en/climatechange/paris-agreement (last visited Feb. 24, 2022).

112. Fiona Harvey, *The Paris Agreement Five Years On: Is it Strong Enough to Avert Climate Change Catastrophe?*, THE GUARDIAN (Dec. 8, 2020), https://www.theguardian.com/environment/2020/dec/08/the-paris-agreement-five-years-on-is-it-strong-enough-to-avert-climate-catastrophe.

113. HUNTER ET AL., *supra* note 97, at 673.

114. *Id.* at 672.

115. *Id.*

116. *Id.*

117. Paris Agreement, *supra* note 18, art. 4, ¶ 9.

118. *See* Report of the Conference of the Parties on its Twenty-First Session, held in Paris from Nov. 30 to Dec. 13, 2015, Decision 1/CP.21, U.N. Doc. FCCC/CP/2015/10/Add.1, at ¶¶ 23 & 24 (stipulating that parties whose pledges contain time frames up to 2025 and 2030 "communicate by 2020 a new [pledge]").

producing "one of the largest and most closely followed climate meetings that the world has ever seen."[119]

The pledges communicated at Glasgow were nevertheless baldly disappointing. Countries were happy to participate in the pledging architecture—151 made new pledges[120]—but the pledges were tepid. If fully implemented and fulfilled, they should produce a catastrophic 2.7 degrees Celsius of warming by the end of the century.[121] Moreover, many states committed to zero out their greenhouse gas emissions only in a future, far away decade such as 2050 (United States), 2060 (China), or 2070 (India)—with no intermediate goals to ensure progress[122]—making the pledges seem distinctly unserious.

Glasgow did feature incremental movement on other fronts, such as elaborating on the pledging platform—specifically the means of monitoring, reporting on, and verifying state pledges.[123] Notwithstanding their poor pledges, parties reaffirmed the top-line goal of warming "well below 2 °C" and called for "accelerated action in this critical decade."[124]

5. *More Explanations for Climate Pledging*

The prior sections offered a history of the development of pledging within international climate law that is focused on the "common but differentiated" responsibility principle. To be clear, this is one way to explain the emergence of pledging in climate law, but not a single causal explanation. Rather, the emergence of pledging is better understood as the product of converging trends and functional requirements.

Principally, parties to the Paris Agreement came to the table with different ideas about justice and responsibility.[125] Parties have divergent per capita emissions, sunk costs in infrastructure, capacities to transition to a green economy, historical emissions, development needs, and priorities between

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119. HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 1 (6th ed. Supp. 2021) [hereinafter HUNTER, Supp.].

120. *Id.* at 4.

121. *Id.* at 4; *see also Updated NDC Synthesis Report: Worrying Trends Confirmed*, U.N. CLIMATE CHANGE (Oct. 25, 2021), https://unfccc.int/news/updated-ndc-synthesis-report-worrying-trends-confirmed (showing the same numbers as before COP26).

122. HUNTER, Supp., *supra* note 119, at 4 (reporting that pledges were perceived as unserious since "the leaders declaring the goals would likely be retired or deceased by the time the promises come due" and "[n]o one believes progress was sufficient.").

123. Glasgow Climate Pact, Decision -/CMA.3 (Nov. 13, 2021). Specifically, the parties finalized the "Paris Agreement Rulebook," a set of rules that specifies how parties must report on progress in achieving their pledges. *COP26 Outcomes: Transparency and Reporting*, https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact/cop26-outcomes-transparency-and-reporting (last visited Oct. 16, 2022).

124. The Glasgow Pact also requested that parties "phase[]down" coal and other fossil fuels and "consider further actions to reduce" non-carbon greenhouse emissions, and that developed country Parties "fully deliver" on the goal to financially support the climate efforts by developing countries. Glasgow Climate Pact, Decision -/CMA.3 (Nov. 13, 2021).

125. *See* BODANSKY ET AL., *supra* note 44 at 215-22 (identifying agendas of various parties at the Paris Climate Conference, including with respect to justice and responsibility).

climate and other agendas like alleviating poverty.[126] In these circumstances, pledging offers a way to break logjams over philosophical disagreement about what justice requires.[127] That is, pledging allows each state to make its own judgments about how much to sacrifice for the common goal.

Moreover, climate change has been described as a "super wicked problem" with "enormous interdependencies, uncertainties, circularities, and conflicting stakeholders implicated by any effort to develop a solution."[128] Pledging may be the best available legal technology to address a problem with these features.[129] That is, in circumstances of such interdependence, uncertainty, and conflict, there is no obvious Pareto-optimal solution. In fact, if Pareto-optimization is possible, such a solution may not be palatable to participants. Given the significant sacrifices climate stabilization requires, it is likely that any scientifically adequate solution will not be politically palatable. Pledging, a bottom-up solution allowing each government to go its own way within a common framework, offers a pressure valve: an insufficient but palatable way to respond to these distinct challenges.[130]

Pledging in climate law could also be in part the result of borrowing from other regimes. For example, at the time of the Paris Climate Conference, the U.N. Global Compact had already adopted a pledging format,[131] which would have made it familiar to international diplomats as well as many of the private sector entities who participated robustly in international climate negotiations.[132] This borrowing aspect is discussed further in Part III.

Another well-aired account of the Paris Agreement's treaty design choice should be noted and distinguished. The nature of the Paris commitments is often attributed to the United States' role in the climate negotiations. Particularly, the Obama administration sought "to ensure that the president would be able to bind

126. *See id.*

127. Thanks to David Luban for this phrasing.

128. Richard J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORNELL L. REV. 1153, 1159 (2009). Daniel Bodansky memorably describes these interlocking problems as including a "'Fully Monty' problem" (requiring change in every sector), a "procrastination problem" (requires immediate costs to achieve distant benefits), and an "anarchy problem" (no central authority to issue rules), in addition to problems of complexity, uncertainty, distribution, and equity. Daniel Bodansky, *The United Nations Climate Change Regime Thirty Years on — A Retrospective Assessment* 11-12 (unpublished manuscript on file with author).

129. *See, e.g.*, Bodansky, *supra* note 22, at 288 ("[G]iven current political realities, it produced as much as reasonably could have been expected, and perhaps more."); *see also* Prasad, supra note 5, at 217 (offering a game theory explanation for why the commitment structure in the Paris Agreement is the only realistic possibility for international climate law).

130. For more on this point, *see infra* Part V. Additional features of a "super wicked" problem include "the fact that time is not costless, so the longer it takes to address the problem, the harder it will be to do so," that "those who are in the best position to address the problem are . . . those with the least immediate incentive to act," and "the absence of an existing institutional framework of government" with the capacity to solve the problem. Lazarus, *supra* note 128, at 1160.

131. *See infra* Section III.A.1.

132. For example, they serve on national delegations, as accredited observers, as sponsors of various aspects of the climate conferences, and as lobbyists on the domestic level to help shape the preferences of international negotiators. *See*, *e.g.*, Melissa J. Durkee, *Industry Groups in International Governance: A Framework for Reform*, 13 J. HUM. RTS. ENV'T (2022) (describing these activities).

the United States without seeking approval from the Senate."[133] As Jean Galbraith explains, to avoid further approval from the Senate or Congress, the Obama administration had to "avoid" making "a legally binding commitment to reduce emissions . . . and, especially . . . with respect to specified targets."[134] It did so by "insisting that the Paris Agreement not contain any legally binding commitments to reduce emissions."[135] However, this concerns the non-binding nature of the Paris commitments, not their pledging format. Of course, there are many ways to make a non-binding treaty that do not involve the pledging format, and pledges can be binding if the treaty platform makes them so.[136]

C. In Other Areas of Law

What is the significance of pledging as a treaty design choice outside of climate law? While this Article uses climate law as a case study and springboard, it is certainly not the only example of pledging within international law. Further work could examine other regimes through the lens of the pledging framework and gather productive insights.

For example, some trade agreements appear to be pledging platforms. Under the General Agreement on Tariffs and Trade (GATT), states commit to an array of common rules, but the specifics are formalized in pledges.[137] For example, in Article II(a) of the GATT, parties commit themselves to "accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."[138] Those commitments in the Schedule reflect national-level pledges. Other trade rules also use the pledging format. For example, Nicolas Lamp has drawn parallels between the Paris Agreement and the Agreement on Trade Facilitation, which was concluded in the World Trade Organization in 2013, two years before the negotiation of the Paris Agreement.[139] As Lamp notes, Article 14.2 of the Trade Facilitation agreement permits each developing country

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133. *United States Joins Consensus on Paris Climate Agreement*, 110 AM. J. INT'L L. 374, 381 (2016) (noting that, "as a matter of U.S. law, the administration sought an executive agreement rather than an Article II treaty given the near-certainty that Senate approval would not be forthcoming").

134. Jean Galbraith, *From Treaties to International Commitments: The Changing Landscape of Foreign Relations Law*, 84 U. CHI. L. REV. 1675, 1737-38 (2017).

135. *Id.* at 1737.

136. Senior Obama administrative officials noted at the time the administration's understanding that the Paris Agreement would not require Senate approval because states are not legally required to fulfill their pledges. *United States Joins Consensus on Paris Climate Agreement*, *supra* note 133, at 381. This is so, they affirmed, even though declaring and reporting on those pledges is legally required under the agreement, because declaring a pledge and reporting on progress is within the authority of the U.S. executive branch. *See id.*

137. General Agreement on Tariffs and Trade, ¶ 1, Oct. 30, 1947, 55 U.N.T.S. 188.

138. *Id.* art. 2.

139. Nicolas Lamp, *Legislative Innovation in the Trade and Climate Regimes: Towards a Framework for the Comparative Analysis of Multilateral Lawmaking* in GLOBAL ENVIRONMENTAL CHANGE AND INNOVATION IN INTERNATIONAL LAW 270, 275 (Neil Craik, Cameron S.G. Jeffries, Sara L. Seck & Tim Stephens eds., 2018) (noting that both the Paris Agreement and the Agreement on Trade Facilitation move from multilaterally negotiated commitments to individually tailored commitments).

to individually establish its own implementation schedule.[140]

The Convention on Biological Diversity also employs pledging: The Convention provides "global biodiversity targets" that offer a "basis for national commitments"—or pledges, as this Article defines them.[141] Christina Voigt points out that the Paris implementation mechanism—with communication of subsequent pledges and public accounting for parties' achievement of those—would offer a good model for compliance in the context of complex biodiversity challenges. In biodiversity, as in climate, Voigt suggests, pledging can serve to "increase parties' ambition and to enhance implementation, over time."[142]

There are many other possible examples. For example, to what extent do pledges of public aid for development reflect the pledging framework—featuring individually determined promises that are not formally reciprocal but might be subject to shadow bargaining and made pursuant to some kind of platform that increases the reputational costs of noncompliance?[143]

The point is that viewing prior agreements through the lens of this design choice would reveal a broader pledging landscape and could help sharpen observations about the nature of the order that pledging heralds and produces. Moreover, looking forward, the Paris Climate Agreement could have outsized influence as a model for future lawmaking, as one of the most significant instances of broad multilateral treatymaking in the past two decades.

III. PLEDGING BEYOND INTERNATIONAL LAW

Pledging is not just a design choice in climate law, but rather is a phenomenon that crosses the public-private divide, appears at all levels of governance, and addresses a wide array of topics. While the previous Part focused on pledging as a legal technology, pledging and pledging platforms appear as ordering devices both inside and outside formal international law. This Part describes the proliferation of pledging in sub-state, non-state, and multistakeholder pledging platforms. In the sections that follow, the reader is invited to note that, despite the multiplicity and heterogeneity of the actors producing and consuming pledging frameworks, there is regularity to those frameworks. This regularity justifies conceiving and evaluating them together as a single ordering device that is indicative of an emerging world order.

A. United Nations Platforms

As the latter half of the twentieth century brought longer supply chains and globally dispersed corporate families, international organizations sought to engage these multinationals directly on matters involving human well-being and

140. *Id.* at 287 (describing this as an "ex post" individualization method wherein parties could design "a bespoke implementation schedule.").

141. CHRISTINA VOIGT, AN IMPLEMENTATION MECHANISM FOR THE POST 2020 GLOBAL BIODIVERSITY FRAMEWORK (2022) (proposing to transplant the Paris compliance architecture into the biodiversity context).

142. *Id.*

143. Thanks to Sonia Rolland for this suggestion.

the environment. Pledging emerged as a prominent tool to enlist the private sector's voluntary support for public agendas.

1. The Global Compact

This history begins with Kofi Annan, Secretary General of the United Nations, who in 1999 introduced a landmark initiative called the U.N. Global Compact, meant to engage with business enterprises on human rights, labor, and environmental matters.[144] The Global Compact asks business entities to "demonstrate their leadership role as world citizens" by pledging to "endors[e] and champion[] the nine principles . . . and mak[e] sure they are carried out in corporate practice."[145]

In terms of its structure, the Global Compact was originally a proto-pledging architecture: Members were asked to endorse the Compact's principles and then make progress reports.[146] Now, reports must include forward-looking pledges in each of the Global Compact's four areas (human rights, labor, environment, and anti-corruption).[147] Consider the ordering regularities: Just as with the Paris Climate Agreement, Global Compact members must submit successive pledges;[148] in both cases, pledges are recorded and hosted on a platform; pledges are publicized and rely on relational pressure for compliance; and the pledges serve as the cornerstone means of enlisting action on the

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144. U.N. Global Compact, *Who We Are*, https://www.unglobalcompact.org/what-is-gc.

145. Kathryn Gordon, *The OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison* 5 (OECD Publ'g, Working Paper No. 2001/05, 2001); *see also* U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/ (last visited Feb. 24, 2022) (listing the ten principles, such as, with respect to environmental commitments: "Principle 7: Businesses should support a precautionary approach to environmental standards; Principle 8: undertake initiatives to promote greater environmental responsibility; and Principle 9: encourage the development and diffusion of environmentally friendly technologies").

146. Gordon, *supra* note 145, at 6 (noting that these reports were meant to include "specific examples of progress [entities] have made or lessons they have learned in putting the principles into practice").

147. *The Communication on Progress (CoP) in Brief*, U.N. GLOBAL COMPACT (last visited Feb. 24, 2022), https://www.unglobalcompact.org/participation/report/cop. The Global Compact has evolved over time. For example, while the Compact was initially tied to the Millennium Development Goals, which sought to alleviate poverty in the developing world, the United Nations later linked it to the Sustainable Development Goals and Agenda 2030, which reframed the poverty and development issues in terms of sustainability. *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. DEP'T OF ECON. & SOC. AFFS., https://sdgs.un.org/2030agenda (last visited Feb. 25, 2022). Now, the "multi-year strategy of the U.N. Global Compact is to drive business awareness and action in support of achieving the Sustainable Development Goals by 2030." *Making Global Goals Local Business*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/sdgs (last visited Feb. 25, 2022).

148. *See* Gordon, *supra* note 145 145(noting that companies pledge to "publicly advocate the Compact in their mission statements, annual reports and other public statements[;]" they also have to report each year on outcomes so far). Of course, these regularities may also have a causal relationship: The Global Compact predated the Paris Agreement by sixteen years, so it was very familiar in the international system by the time the Paris Agreement was negotiated, and particularly familiar to the private sector representatives attending the Paris Climate Conference as observers or delegates. *See COP21 An Unstoppable Momentum*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/take-action/action/cop21-business-action (last visited Oct. 12, 2022)

respective project.[149] Both platforms anticipate periodic review and "ratcheting up" of the pledged commitment.[150]

The Global Compact has attracted wide participation. At the time of this writing, the United Nations claims as members "over 15,000 companies based in over 160 countries, both developed and developing, representing nearly every sector and size."[151] Its participant database has nearly 20,000 entries.[152] The Global Compact also launched a large array of related and affiliated public-private partnerships and diverse mechanisms by which the United Nations can engage with private entities.[153] These partnerships follow the Compact's pledging structure and cover many issue areas, such as education, women's rights, sustainable energy, water, and others.[154]

2. *The Non-State Actor Zone*

For example, in 2015, U.N. Secretary-General Ban Ki-moon memorably called for "all hands on deck" when he opened the Paris Climate conference in 2015.[155] He praised climate pledges by "some of the world's largest" oil and gas

149. Gordon, *supra* note 145, at 6 (reporting that the Compact offers a means of coordination between relevant actors: "The International Labour Office, the Office of the High Commission for Human Rights and the U.N. Environment Programme stand ready to work directly with corporations to aid in the implementation of the Global Compact").

150. *Id.* (defining the annual review process as "an attempt to get firms to 'ratchet up' their performance in the areas covered by the two sets of principles" in order to create "a framework that will encourage firms to make continuous improvements in their non-financial performance, as set forth in the . . . principles").

151. *The World's Largest Corporate Sustainability Initiative*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/what-is-gc (last visited Feb. 25, 2022).

152. *See Who's Involved*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/what-is-gc/participants (last visited Feb. 25, 2022) (proposing additional business participants, including nongovernmental organizations, foundations, academic institutions, and other groups); Georg Kell, *Twelve Years Later: Reflections on the Growth of the U.N. Global Compact*, 52 BUS. & SOC'Y 31, 31-52 (2021) (reviewing these diverse partnerships).

153. *See* Georg Kell, *Relations with the Private Sector*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL ORGANIZATIONS 730, 743 (Jacob Katz Cogan, Ian Hurd & Ian Johnstone eds., 2016) (describing the CEO Water Mandate, Principles for Responsible Management Education, Education First, Women's Empowerment Principles, and Sustainable Energy for All, among others). For example, the "Caring for Climate" partnership claims to be the "world's largest initiative for business leadership on climate change." *Join Caring for Climate*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/take-action/action/climate (last visited Feb. 25, 2022). The project, boasting participation by over 400 companies from 60 countries, is a joint initiative of the Global Compact, the secretariat of the United Nations Framework Convention for Climate Change, and the United Nations Environment Program. Participants must sign a framework statement, written in the typical format of a multilateral treaty. *Caring for Climate: The Business Leadership Platform*, CARING FOR CLIMATE, https://d306pr3pise04h.cloudfront.net/docs/publications%2FC4C_Statement.pdf (last visited Feb 25, 2022). Joining requires "a pledge to disclose your progress annually." *Join Caring for Climate*, *supra*. The effort was launched in 2007, so it reflects this early pledging format where participants make a top-line commitment and then report on progress. Later, the Global Compact and its progeny updated their pledging architecture to include forward-looking pledges.

154. *Id.*

155. Ban Ki-moon, Secretary-General, U.N., Remarks to COP21 Presentation of Draft Outcome Document in Paris, France (Dec. 12, 2015) https://www.un.org/sg/en/content/sg/speeches/2015-12-12/remarks-cop21-presentation-draft-outcome-document (noting pledges by oil and gas companies, and financial institutions); *see also Climate Summit: 'All Hands on Deck' Declares Ban, Calling for Leadership, Concrete Action*, U.N. NEWS CENTER (Sept. 23, 2014), https://tinyurl.com/4fkjpxt2.

companies and financial institutions and asked that others come on board.[156] Parties to the Paris Agreement also called for efforts by non-state actors, and did so with meticulous provisions in the text of the adoption document[157]—an unusual move in international law since a treaty binds only state parties.[158] Specifically, the adoption document launched a pledging platform: the Non-State Actor Zone for Climate Action (NAZCA) platform and its Global Climate Action portal, where non-State actors can "display their commitments to act on climate change."[159] As of this writing, the platform lists over 30,000 non-State actors engaging in climate actions in 196 countries through almost 14,000 companies and over 3,400 organizations.[160] The platform invites à la carte pledges as well as pledges within specific initiatives.[161] Pledges promise efforts to create "a mass market for zero-emission freight vehicles,"[162] or to "pioneer[] innovative finance and insurance products to mitigate and reduce ocean risk in vulnerable regions," and so on.[163]

3. *Proliferating Pledging Platforms*

"The Paris Agreement was adopted on the back of a tsunami of voluntary actions" in the climate arena, Maria Banda observes, and "its adoption energized unprecedented commitments by a wide range of non-State actors."[164] Many of these private commitments have been made through pledging platforms

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156. Ki-moon, *supra* note 155.

157. Adoption of the Paris Agreement, UNFCCC, Rep. of the Conf. of the Parties on its Twenty-First Session, Addendum ¶ 114, U.N. Doc. FCCC/CP/2015/10/Add.1, 19 (Jan. 29, 2016) (inviting non-state actors to "scale up . . . actions to reduce emissions" and address "adverse effects of climate change"). The preamble expresses the parties' agreement to promote cooperation that will "mobilize stronger and *more ambitious climate action* 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." *Id.* The document devotes an entire section to non-party stakeholders.

158. Banda, *supra* note 5, at 338-39 (explaining that drafters "recognized that the Agreement . . . requires a collective effort of truly global proportions").

159. *About*, GLOBAL CLIMATE ACTION, https://climateaction.unfccc.int/About (last visited Feb. 24, 2022).

160. *Actor Tracking,* GLOBAL CLIMATE ACTION, https://climateaction.unfccc.int/Actors (last visited Oct. 29, 2022).

161. *See id.* (stating that these cooperative initiatives are "arrangements between non-state, subnational actors and/or national governments" to achieve climate goals; as of the end of 2021, there were 23,873 registered participants for the 151 initiatives, ranging from cities to companies and investors); *see also* Banda, *supra* note 5, at 369 (explaining that the NAZCA platform's "pledged actions vary considerably, but generally involve some form of emissions reduction targets or renewable energy commitments").

162. *Action Toward Climate-Friendly Transport*, GLOBAL CLIMATE ACTION, https://climateaction.unfccc.int/Initiatives?id=13 (last visited Nov. 3, 2022).

163. *Ocean Risk and Resilience Action Alliance (ORRAA)*, GLOBAL CLIMATE ACTION, https://climateaction.unfccc.int/Initiatives?id=107 (last visited Feb. 24, 2022). The procedure for launching a new initiative takes one down a rabbit hole of layered platforms. *See generally Climate Initiatives Platform Homepage*, U.N. ENV'T PROGRAMME, https://climateaction.unfccc.int/Initiatives?id=6 (last visited Nov. 3, 2022) (providing the example that, to register a new initiative, inquirers are led to the United Nations Environment Programme's Climate Initiatives Platform (CIP), which includes both Paris Agreement aligned and independent pledges as an even larger collection of initiatives).

164. Banda, *supra* note 5, at 327.

organized by the United Nations and its related organs. The platforms are often layered and interconnected, where a pledge through one platform opens the door to the next.

For example, the Science Based Targets initiative (SBTi) invites members to "align [their] corporate voluntary greenhouse gas reduction targets with climate science," that is, to "set a science-based target."[165] More than 2,000 companies have accepted this invitation.[166] Pledges are individually determined, but many take the same form as the greenhouse gas reduction pledges under the Paris Climate Agreement: Chipotle Mexican Grill, for example, "commits to reduce absolute scope 1 and 2 GHG emissions 50% by 2030 from a 2019 base year."[167]

Companies who join the SBTi with sufficiently ambitious pledges can, in turn, join the "Business Ambition for 1.5 ºC" campaign, as well as the "We Mean Business" platform and the "Race to Zero" campaign.[168] We Mean Business claims that over 900 companies have successfully "align[ed] their emission reduction targets with the 1.5 °C trajectory."[169]

Race to Zero "mobilizes a coalition of leading net zero initiatives" including cities, regions, businesses, investors, and higher education institutions, which collectively contribute twenty-five percent of global carbon dioxide emissions.[170] Race to Zero has all the hallmarks of a pledging platform: To join, participants must make a greenhouse gas reduction pledge to reach within the next decade, "which reflects maximum effort"; to work toward fulfilling that pledge; and to report publicly on progress.[171] Reports are publicized on the UNFCCC Global Climate Action Portal.[172]

The Glasgow Financial Alliance for Net Zero ("Alliance"), a recent entrant to the U.N.-backed pledging milieu, attempts to coordinate pledging efforts for the financial sector.[173] Members making either the Race to Zero pledge, or

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165. The SBTi is a "partnership between CDP [an international non-profit organization], the United Nations Global Compact, World Resources Institute (WRI) and the World Wide Fund for Nature (WWF)." *Set Science-Based Emission Reduction Targets*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/take-action/action/science-based-target (last visited Feb. 25, 2022). The Global Compact announces that "[s]cience-based target setting has become a standard business practice." *Id.*

166. *Companies Taking Action*, SCI. BASED TARGETS, https://sciencebasedtargets.org/companies-taking-action#table (last visited Feb. 25, 2022).

167. *Id.* Johnson & Johnson is even more ambitious, committing to "reduce absolute scope 1 and 2 GHG emissions 60% by 2030 from a 2016 base year." *Id.*

168. *Science Based Targets Initiative Commitment Letter*, SCI. BASED TARGETS 2 (Nov. 2021), https://sciencebasedtargets.org/resources/files/SBT-Commitment-Letter.pdf.

169. *Business Progress*, WE MEAN BUS. COAL., https://www.wemeanbusinesscoalition.org/ (last visited Feb. 25, 2022).

170. *Race to Zero Campaign*, U.N. FRAMEWORK ON CLIMATE CHANGE CONVENTION, https://unfccc.int/climate-action/race-to-zero-campaign#eq-3 (last visited Feb. 25, 2022).

171. *Id.*

172. *Id.*

173. *See About Us*, GLASGOW FIN. ALL. FOR NET ZERO, https://www.gfanzero.com/about/ (last visited Feb. 25, 2022) (stating that GFANZ is a "forum for leading financial institutions to accelerate the transition to a net-zero global economy"). The U.N. Special Envoy for Climate Action and Finance initiated the Alliance as a partnership with the Race to Zero campaign to bring together existing and new net-zero finance initiatives under one coalition. *Id.*

another pledge targeted to particular financial sub-sectors, automatically receive entry to the Alliance.[174] Channeling entry to the Alliance through the Race to Zero campaign ensures that all participants have "pledge[d] at the head-of-organization level to reach (net) zero GHGs as soon as possible, and by midcentury at the latest, in line with global efforts to limit warming to 1.5 ºC," and also have set an interim target for the next decade reflecting "maximum effort."[175] Firms must also publish their net-zero transition strategy and commit to transparent reporting on progress.[176] Less than a year after its launch, the Alliance has already drawn membership from financial firms responsible for assets of over $130 trillion.[177]

The examples offered in the previous paragraphs are just some of the many pledging initiatives organized by the United Nations and targeted at various agglomerations of private parties. As this discussion has illustrated, many of these pledging platforms are linked to others, which produces a dense network of interlinked pledging platforms.

B. Subnational Platforms

Subnational actors have also joined the pledging movement. They have pledged within larger platforms,[178] and developed their own.[179] In the United

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174. *See id.* (stating that "[a]ccess to GFANZ is anchored in the Race to Zero campaign to ensure credibility and consistency"). For members of the financial sector, making a Race to Zero pledge—either directly or through SBTi—will automatically grant entry to the Alliance, as well as making a pledge through one of a host of other net zero initiatives targeted to particular financial sub-sectors (banks, asset managers, investors, insurers, etc.). *See Membership*, GLASGOW FIN. ALLIANCE FOR NET ZERO, https://www.gfanzero.com/membership/ (last visited on Feb. 25, 2022) (noting that the following pledges are included: "the Net-Zero Banking Alliance, the Net Zero Asset Managers initiative, the Net-Zero Asset Owner Alliance, the Paris Aligned Investment Initiative, the Net-Zero Insurance Alliance, the Net Zero Financial Service Providers Alliance, or the Net Zero Investment Consultants Initiative").

175. *Starting Line and Leadership Practices 2.0*, RACE TO ZERO 2 (June 2021), https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-Criteria-2.0.pdf.

176. *Id*.

177. *Amount of Finance Committed to Achieving 1.5 °C Now at Scale Needed to Deliver the Transition*, GLASGOW FIN. ALL. FOR NET ZERO, https://www.gfanzero.com/press/amount-of-finance-committed-to-achieving-1-5c-now-at-scale-needed-to-deliver-the-transition/ (last visited Nov. 1, 2022) (announcing that "over $130 trillion of private capital is committed to transforming the economy for net zero"). The Alliance includes 450 financial firms from 45 countries. *About Us*, *supra* note 173. Significantly, the Alliance is led by a principals group including chief executive officers from BlackRock, Bank of America, Citi, Banco Santander, the Rockefeller Fund, and other major industry leaders. *Id.* Michael Bloomberg is a co-chair. *Id.* In addition to collecting pledges, the group encourages the financial sector to invest in decarbonization, presenting this as an opportunity for investors. *See id.* (stating that one key area critical to the net zero transition is "accelerating decarbonization in the real economy"). It offers "17 opportunity roadmaps" including wind power, solar power, alternative proteins, forest restoration, electricity storage, electric vehicle chargers, and others. *Financing Roadmaps*, GLASGOW FIN. ALL. FOR NET ZERO, https://www.gfanzero.com/netzerofinancing/ (last visited Feb. 25, 2022).

178. *See, e.g.*, *supra* notes 159-163 and accompanying discussion (describing the Non-State Actor Zone for Climate Action and its Global Climate Action portal).

179. *See, e.g.*, *Working Together: Global Aggregation of City Climate Commitments*, C40 CITIES 3, https://issuu.com/c40cities/docs/global_aggregation_glossy_final_3__; *see generally* Anél du Plessis, *Climate Change Law and Sustainable Development*, *in* RESEARCH HANDBOOK ON INTERNATIONAL LAW AND CITIES 187, 192 (Helmut Philipp Aust & Janne E. Nijman eds., 2021) (addressing cities as "global climate change actors" who have been "bold in making commitments on emissions reduction targets");

States, these efforts accelerated after the Trump administration's 2017 announcement that it would withdraw from the Paris Agreement.[180] One prominent example, launched in 2017, is the C40 Cities initiative: "a network of mayors taking urgent action to confront the climate crisis."[181] Among its modalities of action, C40 Cities uses the pledging format, inviting cities to publish 1.5 °C-compatible climate action plans.[182]

Other notable subnational efforts are the Under2 Coalition[183] and Climate Mayors.[184] Under2 is a pledging platform for state and regional governments that boasts membership of 260 subnational governments representing 50% of the global economy.[185] Climate Mayors is a U.S.-based pledging platform including 470 mayors in the United States.[186] Pledges to the latter must include a greenhouse gas inventory, near- and long-term reduction targets, and a plan aligned with those targets.[187]

Similar subnational efforts are coalescing in other countries, including the Japan Climate Initiative and the Argentinian Network of Municipalities.[188] The European Climate Pact's "Count Us In" Partnership invites subnational units and individuals to symbolically ratify the Paris Climate Agreement, and then to make their own parallel pledges.[189] The point is not to exhaustively review these efforts, but to note this additional site of pledging activity: cities and subnational units.

JOLENE LIN, GOVERNING CLIMATE CHANGE: GLOBAL CITIES AND TRANSNATIONAL LAWMAKING (2018) (illustrating how cities play an increasingly visible role in transnational climate law and policymaking, including through pledging); Helmut Philipp Aust, *The Shifting Role of Cities in the Global Climate Change Regime: From Paris to Pittsburgh and Back?*, 28 REV. OF EU. COMP. & INT'L ENV'T L. (2019) (explaining that cities and subnational authorities are taking an increasingly assertive role in climate governance).

180. *See, e.g.*, *Open Letter to the International Community and Parties to the Paris Agreement from U.S. State, Local, and Business Leaders*, WE ARE STILL IN (June 5, 2017), https://www.wearestillin.com/we-are-still-declaration.

181. *About C40*, C40 CITIES, https://www.c40.org (last visited Feb. 26, 2022).

182. *1.5 °C Climate Action Plans*, C40 CITIES, https://www.c40.org/what-we-do/raising-climate-ambition/1-5c-climate-action-plans/(last visited Feb. 26, 2022).

183. *Under2 Coalition*, CLIMATE GRP., https://www.theclimategroup.org/under2-coalition (last visited Mar. 1, 2022) ("The Under2 Coalition brings together over 270 governments representing 1.75 billion people and 50% of the global economy.").

184. CLIMATE MAYORS, https://climatemayors.org/ (last visited Mar. 1, 2022).

185. *Under2 Coalition*, *supra* note 183.

186. CLIMATE MAYORS, *supra* note 184.

187. *Under2 Memorandum of Understanding*, CLIMATE GRP., https://www.theclimategroup.org/under2-memorandum-understanding (last visited Mar. 1, 2022).

188. JAPAN CLIMATE INITIATIVE, https://japanclimate.org/english/ (last visited Mar. 1, 2022); Charlotte Owen-Burge, *Argentinian Network of Municipalities Against Climate Change*, RACE TO ZERO (June 30, 2021), https://climatechampions.unfccc.int/team_member/argentine-network-of-municipalities-against-climate-change/.

189. *EU Climate Pact*, COUNT US IN, https://www.count-us-in.org/en-gb/euclimatepact/ (last visited Feb. 25, 2022). These pledges are meant to mirror European Union member states' own pledges on the Paris Climate Agreement platform. *European Climate Pact*, EUROPEAN UNION, https://europa.eu/climate-pact/index_en (last visited Feb. 25, 2022). In a similar way, when the United States pulled out of the Paris Agreement in 2020, private and public sector leaders from states, cities, businesses, and universities also symbolically signed the Paris Climate Agreement. *America's Pledge*, BLOOMBERG, https://www.americaspledgeonclimate.com (last visited Feb. 25, 2022).

C. Nongovernmental and Multistakeholder Platforms

Nongovernmental and multistakeholder pledging efforts have also proliferated. There is a large amount of activity in this space. Three notable examples that demonstrate the scope of this activity are the World Economic Forum, a new Paris Peace Forum, and the responsible investor watchdog group Ceres.

1. The World Economic Forum

The World Economic Forum ("WEF") is a non-profit foundation seeking to "demonstrate entrepreneurship in the global public interest."[190] Its signature activity is an annual conference in Davos, Switzerland, where world leaders, philanthropists, corporate leaders, Hollywood icons, and pop stars gather to tackle global public issues.[191] The WEF and its Davos conference have turned to pledging as a main modality of action. Outcomes at Davos take the form of pledges: "lists of announcements made by private and/or public stakeholders about initiatives and partnerships launched in the broad direction of required action."[192] These pledges encompass a vast diversity of topics, such as protecting the world's forests;[193] increasing diversity and inclusion in the workplace;[194] facilitating a circular capital equipment industry;[195] lowering emissions;[196] reducing packaging waste;[197] and training workers in digital skills.[198]

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190. *Our Mission*, WORLD ECON. F., https://www.weforum.org/about/world-economic-forum (last visited Feb. 25, 2022).

191. *How Do We Do Our Work*, WORLD ECON. F., https://www.weforum.org/about/how-does-the-forum-do-its-work (last visited Feb. 25, 2022). The WEF seeks to gather "the foremost political, business, cultural and other leaders of society to shape global, regional and industry agendas." *Id.*

192. Georgios Kostakos, *The Privatisation of Global Governance: Forget New York, Keep Davos?*, EURONEWS (Apr. 2, 2020), https://www.euronews.com/2020/02/04/davos-becoming-more-effective-than-the-un-at-solving-global-issues-it-looks-like-it-view (critiquing these pledges as "collections of apples and pears—different partners, different budgets, different targets—which are very difficult to aggregate, to assess the expected actual result on people and planet, and to monitor implementation in practice").

193. *DocuSign's Davos Pledge*, DOCUSIGN, https://www.docusign.co.uk/blog/docusigns-davos-pledge (last visited Feb. 26, 2022).

194. *Annual Report 2018–2019*, WORLD ECON. F. 40 (2019), https://www3.weforum.org/docs/WEF_Annual_Report_18-19.pdf.

195. *Capital Equipment Coalition*, PLATFORM FOR ACCELERATING CIRCULAR ECON., https://publish.circle-economy.com/capital-equipment-coalition (last visited Feb. 28, 2022).

196. Rebecca Ivey, *China's Action on Air Pollution Can Help Restore Trust in a Greener Future*, WORLD ECON. F. (Jan. 17, 2022), https://www.weforum.org/agenda/2022/01/china-action-air-pollution-restore-trust-greener-future/.

197. Sustainable Dev. Goals Knowledge Hub, *Eleven Global Corporations Pledge to Recycle All Packaging by 2025*, INT'L INST. FOR SUSTAINABLE DEV. (Jan. 25, 2018), http://sdg.iisd.org/news/eleven-global-corporations-pledge-to-recycle-all-packaging-by-2025/.

198. *Annual Report 2018–2019*, *supra* note 194, at 62-63; *see also Biopharma Leaders Unite To Stand With Science*, PFIZER (Sept. 8, 2020), https://www.pfizer.com/news/press-release/press-release-detail/biopharma-leaders-unite-stand-science (discussing intellectual property); *How to Make the Pledge,* OPEN COVID PLEDGE, https://opencovidpledge.org (last visited Feb. 28, 2022) (discussing intellectual property); *About the Giving Pledge*, GIVING PLEDGE, https://givingpledge.org/about (last visited Feb. 28, 2022) (discussing philanthropy); Fairtrade America, *Leading Businesses Sign Fairtrade Pledge to Support*

Commentators have mixed reactions to the Davos pledges. One perspective is that Davos serves as a glossy, innovative, "pro-capitalism, pro-democracy, pro-globalization" alternative to the frayed multistate system.[199] Another reaction is that Davos pledges constitute nothing more than photo-ops: "signing things with fancy pens," and eliciting "evocative headlines" to give the illusion of action, but without any real commitment to address root problems.[200] For our purposes, the bottom line is that Davos, too, serves as a pledging platform, and its constituents try to solve important global problems through pledging.

2. *The Paris Peace Forum*

The Paris Peace Forum ("Paris Forum") is also a nongovernmental organization; it was founded in 2018 and is supported by governmental backers like French President Emmanuel Macron.[201] Like the WEF, the Paris Forum is explicitly multistakeholder,[202] and is meant to respond to public governance gaps,[203] with diverse projects ranging from coral reef protection, pandemic prevention, digital accountability, cybersecurity, aid delivery, and so on.[204] The Paris Forum employs the pledging architecture.[205] For example, it recently launched the "Net Zero Space" initiative aimed at orbital debris, which includes a pledging platform.[206] Diverse actors are asked to pledge "concrete, tangible" actions and plans "to contribute to the 'Net Zero Space' goal."[207]

The Net Zero Space pledges, far from transformative, appear to celebrate

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1.8 Million Farmers Caring for Climate Justice, PR NEWSWIRE (Oct. 8, 2021), https://www.prnewswire.com/news-releases/leading-businesses-sign-fairtrade-pledge-to-support-1-8-million-farmers-calling-for-climate-justice-301395758.html (discussing trade).

199. David Gelles, *What Davos Looks Like When the World Economic Forum is Canceled*, N.Y. TIMES (Jan. 16, 2022), https://www.nytimes.com/2022/01/16/business/davos-world-economic-forum.html; *see also* Kostakos, *supra* note 192 (stating that "[t]he Davos gathering started as a meeting of the world's top corporate leaders 50 years ago").

200. *What the 1% Of the World Think: Davos Pledge*, TARTLE (July 29, 2021), https://tartle.co/what-the-1-of-the-world-think-davos-pledge/.

201. *Paris Peace Forum Press Kit*, PARIS PEACE F. 13 (Nov. 2020), https://parispeaceforum.org/wp-content/uploads/2021/10/DP-Discover-the-third-edition-of-the-Paris-Peace-Forum_EN.pdf#:~:text=The%20Paris%20Peace%20Forum%20is,of%20the%20Paris%20Peace%20Forum.

202. *Missions and Values*, PARIS PEACE F., https://parispeaceforum.org/en/missions-and-values/ (last visited Feb. 25, 2022). The Paris Forum aims to "gather[] new and old actors of global governance: states, international organizations, NGOs, companies, foundations, philanthropic organizations, development agencies, religious groups, trade unions, think tanks, universities, and civil society at large." *Id.* Its founding members include think tanks, foundations, academic institutions, and representatives of the French government. *Id.*

203. *Id.* ("We pick up the slack when [inter-state] institutions cannot act or when the solutions proposed are insufficient.").

204. *Our Priorities*, PARIS PEACE F., https://parispeaceforum.org/en/our-priorities/ (last visited Feb. 25, 2022).

205. Like the World Economic Forum and its Davos conference, the Paris Peace Forum is organized around an annual conference that invites a multiplicity of actors to come present, debate, and discuss governance projects. *See Missions and Values*, *supra* note 202. In this sense, both the Davos conference and the Paris Forum conferences mimic that of intergovernmental organizations.

206. *Net Zero Space*, PARIS PEACE F., https://parispeaceforum.org/en/initiatives/net-zero-space/ (last visited Feb. 26, 2022). This includes a declaration stating the importance of addressing orbital debris and calling for pledges by diverse actors, including "the private sector, civil society, and academia, as well as public authorities and regulators." *Id.*

207. *Id.*

actions that the pledgors are already taking: Eutelsat, a satellite operator, has pledged "to implement[] a company-specific 'Space Debris Mitigation Plan' . . . [that] has achieved a success rate in excess of 95 [percent]."[208] The International Institute of Air and Space Law has pledged "to educat[e] students and young professionals from around the world about the space law and policy aspects of debris mitigation and remediation."[209] Scout, a space observation data and services company, has pledged to "develop[] and provi[de] . . . services that increase space situational awareness for more precise and de-risked operations."[210] The Paris Forum serves as a standard pledging platform: It hosts pledges on its website, publicizes them, and annually gathers actors to assess progress.[211]

3. Ceres

Ceres is different from WEF and the Paris Forum: It is a nonprofit organization that aims to "make the financial business case for sustainability to the largest, most influential investors, companies, policymakers and regulators."[212] It, too, has turned to pledging. The Ceres Ambition 2030 initiative asks participants to "make strong climate commitments with time-bound, science-based, short- and medium-term targets."[213] Ceres asks companies to commit to these pledges directly and works with investors to demand such pledges through the shareholder proposal process.[214]

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These last few paragraphs offered high-profile examples of a phenomenon that has reached almost every kind of actor in almost every area of life. Pledging is very popular in the climate and environmental sustainability arenas,[215] but it

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208. *Id.*

209. *Id.*

210. *Id.*

211. *See Our Initiatives*, PARIS PEACE F., https://parispeaceforum.org/en/our-initiatives/ (last visited Oct. 12, 2022) (displaying the posting and publication of pledges); *The Event: 4th Edition of the 11-13 November*, PARIS PEACE F., https://parispeaceforum.org/en/levenement/ (last visited Oct. 12, 2022) (describing the annual gathering of actors).

212. *About Us*, CERES, https://www.ceres.org/about-us (last visited Feb. 26, 2022).

213. Mindy Lubber, *An Urgent Call To High-Emitting Sectors: It's Time For Climate Action*, FORBES (Sep. 2, 2021, 12:18 PM), https://www.forbes.com/sites/mindylubber/2021/09/02/an-urgent-call-to-high-emitting-sectors-its-time-for-climate-action/?sh=27bcd6321b00 (reporting that the initiative asks "the biggest emitters to ratchet up the ambition of their corporate climate goals, create robust transition action plans, and provide disclosure about how they're achieving interim targets by 2030").

214. *Id.*

215. Business pledges include, for example, Pledge to Reuse, Recycle, Compost Packaging by 2025, Capital Equipment Coalition Pledge, DocuSign for Forests Initiative, End the Illegal HFC Pledge, Businesses Fairtrade Pledge, Core Stakeholder Capitalism Metrics, Future Net Zero Standard, We Mean Business Coalition; pledges enlisting individual pledges include the Count Us In Partnership, We Are Still In, Fair Trade Difference, and the Exponential Roadmap Initiative. *See* Sustainable Dev. Goals Knowledge Hub, *supra* note 197197; *Capital Equipment Coalition*, *supra* note 195195; DocuSign's Davos Pledge, *supra* note 193193; *About*, EUR. FLUOROCARBONS TECH. COMM.,

is not unique to climate. Rather, pledging and pledging platforms have begun to proliferate across a diversity of issue areas, at every level of governance, across the political spectrum, and by public and private actors of all types.[216] Pledging, as this Article argues in the next Part, is indicative of an emerging world order.

IV. THE PLEDGING WORLD ORDER

Pledging is a trans-substantive, trans-regime ordering device. As prior Parts have described, pledging is a way of ordering behavior through promises that are independently generated, formally non-reciprocal ("pledges"), and organized by a central mechanism, like a treaty or other platform ("a pledging platform"). This organizational method crosses the public/private divide and encompasses behavior at many levels of organization, from individuals to municipalities, multinational corporations, nations, and international organizations. Characterizing pledging and pledging platforms as an ordering device cuts across standard distinctions and sweeps the many heterogeneous instances together within one organizing label, rather than dividing law from not-law, international law from municipal, and public from private. As the following discussion asserts, "order" as a conceptual tool offers purchase on that regularity and focuses descriptive and analytical questions about its characteristics and consequences.

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https://stopillegalcooling.eu/#about (last visited Feb. 28, 2022); Fairtrade America, *supra* note 198198; *Measuring Stakeholder Capitalism*, WORLD ECON. F., https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation (last visited Mar. 2, 2022); *Future Net Zero Standard*, ENERGY LIVE NEWS LTD., https://www.futurenetzero.com/standard/ (last visited Feb. 28, 2022); *EU Climate Pact*, *supra* note 189189; *America's Pledge*, *supra* note 189189; Elise Cofield, *Fair Trade Difference Launches with Video and Pledge Drive*, FAIR TRADE CERTIFIED, https://www.fairtradecertified.org/news/announcing-the-fair-trade-difference (last visited Feb. 28, 2022); *Exponential Roadmap Initiative*, EXPONENTIAL ROADMAP, https://exponentialroadmap.org (last visited Feb. 28, 2022).

216. Among a vast diversity of pledges and pledging platforms, here is a small sample: the CEO pledge asks CEOs to make commitments with respect to inclusiveness. *CEO Pledge*, CEO ACTION FOR DIVERSITY & INCLUSION, https://www.ceoaction.com/pledge/ceo-pledge (last visited Feb. 28, 2022). The Giving Pledge targets philanthropists to donate their wealth to charitable causes. *About the Giving Pledge*, *supra* note 198198. The Antimicrobial Resistance Industry Alliance calls for pledges to lobbying in favor of the conservation of antibiotics. *AMR Industry Declaration*, AMR INDUSTRY ALL., https://www.amrindustryalliance.org/amr-industry-alliance-declaration (last visited Mar. 2, 2022). The Generation "T" Building Trades Pledge seeks commitments to hire a diverse and inclusive skilled trades workforce. *The Pledge,* GENERATION T LOWES, https://www.wearegenerationt.com/support-the-trades/the-pledge (last visited Feb. 28, 2022). The National Red Ribbon Campaign Pledge asks parents to pledge to keep kids free from substance abuse. *Sign the Pledge*, RED RIBBON CAMPAIGN, https://www.redribbon.org/pledge#:~:text=I%20pledge%20to%20grow%20up,being%20healthy%20and%20drug%20free. (last visited Mar. 2, 2022). The Parity Pledge requires commitments to race and gender diversity in corporate boardrooms. *Take the Parity Pledge*, PARITY.ORG, http://www.parity.org/take-the-pledge (last visited Feb. 28, 2022). The EU Pledge asks food and beverage companies to pledge good conduct in advertising to children. *Welcome to the EU Pledge*, EU PLEDGE, https://eu-pledge.eu (last visited Feb. 28, 2022). The Association for Lou Gehrig's (ALS) Ice Bucket Challenge asks individuals to pledge money and publicize the cause with ice bucket dumps. *Ice Bucket Challenge Dramatically Accelerated the Fight Against ALS*, ALS ASS'N (June 4, 2019), https://www.als.org/stories-news/ice-bucket-challenge-dramatically-accelerated-fight-against-als.

A. Defining Terms

The term "world order" is frequently used in international relations.[217] It identifies structured patterns of relationships that affect events in the world.[218] These patterns are usually formalized within institutions and practices, such as international organizations, laws, networks, customs, and other arrangements.[219] It can be useful to see a phenomenon as a regular pattern because patterns bring the recurring features of the phenomenon into view. In the case of an order, these features include the ordering mechanisms, or the instruments of order, that create and maintain the patterns.[220] They are the "rules, norms and institutions" of the order.[221]

John Ikenberry defines an "international order" as "[t]he governing arrangements among a group of states including its fundamental rules, principles, and institutions."[222] Ikenberry builds on Hedley Bull's distinction between "international order" and "world order": While an international order is "a system of rules and settled expectations among states," a world order is not restricted to states, but rather encompasses "all peoples and the totality of relations among them."[223] Orders, in Ikenberry's analysis, are systems of mutual restraint: War is a manifestation of disorder, and postwar settlements construct new orders to restrain this disordered use of power.[224]

An order can serve to restrain power, as in Ikenberry's formulation, described above, or it can structure patterns of behavior with respect to a more specific, discrete issue. That is, orders can exist at varying levels of generality. An order can be established, longstanding, and fundamental to many aspects of world affairs, such as the Westphalian order of sovereign nation-states or the post-World War II order of peace and security organized via the United Nations (the "postwar order").[225] These orders affect almost every aspect of modern life.[226] Conversely, an order can be more specific, aimed at solving a particular

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217. *See* MAZARR ET AL., *supra* note 4, at 7 (exploring use of the term).

218. *Id.* ("An order is a stable, structured pattern of relationships among states."); *cf.* MYERS MCDOUGAL, STUDIES IN WORLD PUBLIC ORDER xi (1987) (observing that to form a "world public order of human dignity," it is important to attend to "complex world and social power processes and their interrelations, and especially upon the factors that affect particular decisions within such processes").

219. *See id.* at 12 ("In the most general sense . . . international order refers to patterns of relations that have become established and, to some degree, institutionalized as institutions and practices.").

220. MAZARR ET AL., *supra* note 4, at 7 (noting that an order involves "some combination of parts, including emergent norms, rulemaking institutions, and international political organizations or regimes, among others").

221. *Id.* These institutions might include some combination of "rulemaking institutions, and international political organizations or regimes." *Id.*

222. JOHN IKENBERRY, AFTER VICTORY 23 (2001).

223. *Id.* at 22 (citing HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS 7 (1977)).

224. *See generally* IKENBERRY, *supra* note 222222, at 3-20 (laying out these points).

225. *See generally* Thomas G. Weiss, *The United Nations: Before, During and After 1945*, 91 INT'L AFFS. 1221 (2015) (describing features of the postwar order).

226. *See, e.g.*, Peter Goodman, *The Post-World War II Order Is Under Assault From the Powers That Built It*, N.Y. TIMES (Mar. 26, 2018), https://www.nytimes.com/2018/03/26/business/nato-european-

problem,[227] such as common product standards adopted to manage transnational food safety issues.[228]

Moreover, there can be multiple, overlapping orders. While theorists in international relations sometimes tend to focus on the liberal postwar order as *the* world order, recent scholarship has recognized a multiplicity of coexisting orders that are organized by issue, region, or otherwise.[229] An order is not necessarily the "decisive, or even dominant, influence on the preferences and behaviors of states" or other actors.[230] Rather, an order is created to achieve an effect. One policy goal may be order as its own agenda—to obtain "a more ordered international system,"[231] but an order can have more specific policy goals, values, and principles. An order is a "regularity of behavioral orientation, communication[,] and action" toward that end.[232]

To gather the features of this definition, a world order is "a system of rules and settled expectations" that encompasses both states and non-state actors. It can encompass both formal law and non-legal regularities of behavior—both of these forms of regularity settle expectations and serve as ordering mechanisms. Orders can be more general, targeted at the agenda of "order" itself, or more specific, created to address specific problems. They can coexist and overlap.[233]

B. Pledging as Order

Using the conceptual apparatus of an "order" to characterize the pledging phenomenon allows us to eschew a certain set of familiar conceptual distinctions—for example, soft law versus hard law; law versus private ordering; public versus private; and so forth—and identify a pattern that cuts across these distinctions. The concept facilitates identifying a regularity in behavior that is composed of instances with different formal legal valences. It allows us to

union.html (assessing the significance of the postwar order); Sagnik Guha, *Globalization and the State: Assessing the Decline of the Westphalian State in a Globalizing World*, 9 INQUIRIES J. 1 (2017), http://www.inquiriesjournal.com/articles/1550/2/globalization-and-the-state-assessing-the-decline-of-the-westphalian-state-in-a-globalizing-world (assessing the significance of the Westphalian order).

227. Gregory Shaffer & Terence C. Halliday, *International Law and Transnational Legal Orders: Permeating Boundaries and Extending Social Science Encounters*, 22 CHI. J. INT'L L. 169, 172 (2021) (stating that the transnational legal order "emerged initially . . . for purposes of problem-solving"); *see also* Shaffer & Halliday, TRANSNATIONAL LEGAL ORDERS, *supra* note 4, at 8 (explaining that actors design orders to solve a problem constructed in a certain way).

228. *See* Tim Büthe, *Institutionalization and Its Consequences: The TLO(s) for Food Safety*, *in* TRANSNATIONAL LEGAL ORDERS, *supra* note 4, at 258 (describing the transnational legal order for trade-related food safety).

229. For example, Alastair Iain Johnston identifies eight "issue-specific" orders in military, trade, information, political development, and other areas. Alastair Iain Johnston, *China in a World of Orders: Rethinking Compliance and Challenge in Beijing's International Relations*, 44 INT'L SEC. 9 (2019). Shaffer and Halliday use the term "order" in the context of diverse, overlapping, and changing transnational legal orders. Shaffer & Halliday, TRANSNATIONAL LEGAL ORDERS, *supra* note 4, at 7-11.

230. MAZARR ET AL., *supra* note 4, at 9.

231. *Id*. at 10.

232. Shaffer & Halliday, TRANSNATIONAL LEGAL ORDERS, *supra* note 4, at 11.

233. *See* Colin I. Bradford, *Perspectives on the Future of the Global Order: Beyond Singular Visions to Multivalent Forcefields*, BROOKINGS (May 4, 2022), https://www.brookings.edu/blog/up-front/2022/05/04/perspectives-on-the-future-of-the-global-order/ (describing current ordering complexity as "multivalent").

consider a legal phenomenon, a private ordering mechanism, and a public-private method of interaction as part of the same category of things: an ordering device or pattern.

Pledging is an ordering pattern with significant repetition in a host of areas. It is the dominant pattern in international climate law and in private projects related to climate stabilization, but it has also emerged outside of climate law, spread to a plethora of topic areas, and is poised for further growth.[234] This ordering device is not limited to the public realm (for example, the Paris Agreement or C40 cities),[235] the private realm (for example, Ceres),[236] the public-private interface (for example, the Glasgow Alliance),[237] or multistakeholder projects (for example, the World Economic Forum or the Paris Peace Forum),[238] but exists in all of them and often intersects them. In each of these many different sites of governance, pledging follows the same template. The policy agendas within the pledging order vary across specific pledging sites, but the common agenda is to mobilize many kinds of stakeholders to align their behavior with a goal, whether that be climate stabilization, orbital debris mitigation, labor issues, or the wide variety of other agendas pledging addresses.

Conceiving pledging as an ordering mechanism that reflects an emerging world order facilitates evaluating the characteristics of that order as a whole. Before proceeding to that evaluation, the conceptual point should be cabined in two ways.

First, to say that pledging reflects an emerging world order is not to say that this is the only order, or the dominant one. Each order calls attention to different regularities. For example, the postwar legal order did not displace the Westphalian order, but rather built on it. The Westphalian order focused on the legal status and prerogatives of the sovereign nation-state; the postwar order did not eschew these regularities but instead added a thick layer of legal rules focused on peace and security.[239] World orders build on or develop out of prior orders and exist in some relationship to them.[240] One commentator calls the

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234. *See, e.g.*, Voigt, *supra* note 141141, at 2 (suggesting that the Convention on Biological Diversity needs a more coordinated implementation structure which could borrow from the Paris pledging format and noting that the Convention "provides a basis for national commitments [*e.g.*, pledges], to be informed by the global biodiversity targets"); Prasad, *supra* note 5, at 246 (stating that "the world has begun to shift to the bottom-up formula" and "pledge and review . . . and subnational initiatives are evidence of this shift").

235. *See supra* Part II, Section III.A.

236. *See supra* Section III.C.

237. *See supra* Section III.A.

238. *See supra* Section III.C..

239. Richard Falk, *Revisiting Westphalia, Discovering Post-Westphalia*, 6 J. ETHICS 311, 313 (2002) ("This Westphalian system originated in Europe, formalized by treaties at the end of The Thirty Years War in 1648, but enlarged by stages to encompass the world, combining at each stage its statism (the logic of equality) with hegemonic actualities (the logic of inequality). The decades after World War II represented the climax of the Westphalian conception of world order.").

240. Mathias Albert & Lothar Brock, *Identities, Borders, Orders: Rethinking International Relations Theory*, 18 BORDERLINES 46 (Mathias Albert, David Jacobson & Yosef Lapid eds., 2001) ("It would be entirely premature to diagnose an all-encompassing evaporation of the Westphalian normative

current context "multivalent" and an era of "complexity [and] contradiction."[241] This Article argues that the complex, contradictory, multivalent context includes the pledging world order.

Second, and building on the first clarification, the argument is not that all future activity will follow the pledging regularity or even that the form of order it represents will be a dominant one, but that recognizing it as an ordering mechanism and part of an emerging order is analytically useful and produces important payoffs.

V. ASSESSING THE PLEDGING WORLD ORDER

What are the qualities of the order that the pledging architecture produces and represents? What kind of an order is this? This Part addresses the question in four stages. First, it offers a critical assessment derived from concerns raised in the literature on the Paris Climate Agreement. That literature identifies two main issues, which this Article characterizes as matters of effectiveness and equity. Second, this Part assesses how structural features of the pledging world order appear to depart from key principles of prior orders. This includes departures from distinctions between public and private governance roles; between formal legal and non-legal ordering mechanisms; between deep and shallow forms of international cooperation; and between the international roles of states and sub-state entities. Taken together, some of these eroding distinctions reflect the twenty-first century move from status to function that is identified elsewhere in the literature.[242]

Rather than looking at what the pledging order is *not*, another way to assess it is to try to see what it *is*. The third portion of this Part offers some initial suggestions, focusing on the pledging order's apparent principle of coordinated autonomy, which could offer legitimacy gains even as the order moves away from the deep institutionalism of the postwar rules-based legal order. Fourth, and finally, responding to this order will require either rejecting it for something else or embracing it and shoring it up. What would the latter course entail? This Part concludes with some preliminary proposals.

A. As an Ordering Mechanism

A good starting point for assessing features of the pledging world order is the existing literature on the Paris Climate Agreement. The literature is extensive and expanding rapidly. But much of it focuses on a very important critique about the effectiveness of this design choice in the climate context. Some of the literature also identifies what I will call an equity critique, which focuses on

world order. This order is *not* superseded by an entirely new order . . . . These concepts are being transformed into continuing processes of ordering . . . in which new forms of normative cohesion, new forms to organize solidarity, can and do emerge.").

241. Bradford, *supra* note 233233.

242. *See, e.g.*, Simon Chesterman, *How 'Public' is Public International Law? Towards a Typology of NGOs and Civil Society Actors*, 24 GLOB. GOV. 159, 168 (2018) (proposing the possibility of a status/function shift similar to the medieval shift from status to contract).

whether this design choice can remedy structural harms or historic injustices.

1. Effectiveness Concerns

The legal literature on the Paris Agreement expresses serious concerns about the effectiveness of the treaty's commitment architecture for stabilizing the climate.[243] These concerns stem in part from the fact that pledges within the Paris framework—including the more "ambitious" pledges recently made at Glasgow—are insufficient to meet the climate stabilization goals of the Paris Agreement.[244]

Scholars attribute this failure to different features of this architecture. Noah Sachs focuses on the agreement's lack of a mechanism to bind states to particular pledges or to enforce the pledges that states make. These features make the Paris Agreement "fragile and prone to defections" because "[s]tates cannot compel other states to submit an ambitious [pledge] or punish states for falling short," resulting in both an ambition gap and a compliance gap.[245] Kasturi Das adds that the architecture can lead to free riding and collective action problems: There is nothing to prevent some parties from moving ahead with ambitious climate action, while others lag.[246] The free riders will benefit from the action of the more ambitious without bearing the cost.[247]

Some commentators have proposed ways to increase effectiveness within the existing pledging framework. For example, the Paris pledges may still offer opportunities for domestic enforcement at the implementation stage.[248] Or parties could focus on more robust systems for measurement, reporting, and verification, which may facilitate better compliance with existing pledges, even if these methods are unlikely to address the ambition gap.[249] Cary Coglianese, analyzing the Paris pledges as a management-based approach to governance, focuses on exogenous factors: He concludes that success will depend on an "anti-populist populism" that pressures domestic governments to act.[250]

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243. Daniel Bodansky captured the popular gestalt at the time when he questioned whether the Paris Agreement was "A New Hope?" His answer to this question was mixed. Bodansky, *supra* note 22, at 288; *see also* Coglianese, *supra* note 22, at 140 (noting that the conclusion of the Paris agreement "could very well prove to be the highwater mark in global cooperation over climate change for some time to come"; "it took little time before the Agreement's effectiveness would be cast into considerable doubt").

244. *See, e.g.*, Abnett, *supra* note 1 (reporting on these concerns).

245. Sachs, *supra* note 22, at 872. Sachs notes that since nothing requires a party to justify its nationally determined contribution in relationship to the treaty's overall two-degree goal, governments can make non-ambitious pledges "solely based on domestic convenience and capability," then later fail to comply even with these weak pledges, claiming that the pledge was simply aspirational. *Id.* at 872-73.

246. Das et al., *supra* note 22, at 10.

247. *Id.*

248. *See, e.g.*, Tracy Bach, *Human Rights in a Climate Changed World: The Impact of COP21, Nationally Determined Contributions, and National Courts*, 40 VT. L. REV. 561, 565 (2016) ("[T]hese nationally determined pledges offer[] new avenues for holding UNFCCC Parties accountable . . . [through] enforcement actions under domestic laws for the implementation of national pledges.").

249. *See, e.g.*, Carlo Carraro, *A Bottom-Up, Non-Cooperative Approach to Climate Change Control: Assessment and Comparison of Nationally Determined Contributions (NDCs)* 4-14 (CTR. ECON. POLICY RSCH. Discussion paper No. 12627 (2018) (making these proposals).

250. Coglianese, *supra* note 22, at 179.

Many commentators agree that the Paris Agreement's design reflects the geopolitical realities of the early twenty-first century and the "super wicked" nature of the climate problem.[251] As Coglianese puts the point: "A strategy that allows each country to develop its own goals almost certainly reflects the best that could be achieved to secure a global agreement of any kind on climate change. In that limited sense, the Paris Agreement can clearly be said to be better than doing nothing."[252] In Daniel Bodansky's take, this "falls short of . . . avoiding dangerous climate change," but is "as much as could reasonably have been expected, and perhaps more."[253]

This lukewarm assessment is mirrored in the literature on pledging in the private sector context.[254] Particularly in the environmental governance arena, pledging has received mixed reviews[255]: "Nonstate actors are not driving the bus toward climate mitigation," and leaving progress to them is "a highly questionable and quite possibly reckless policy option."[256] Indeed, according to one analysis, only about half of the companies with emissions reductions pledges in the SBTi program are on track to meet their pledges.[257] Many companies, while pledging reductions, have actually increased their overall carbon emissions.[258]

Extrapolating from that literature, the pledging world order presents the possibility of a vast amount of activity directed at a problem with very little sense of whether that activity is effective. There is the *appearance* of commitment and movement. Yet many pledges, across the public and private divide, do not move the needle. Pledgors pledge an activity that is already taking place,[259] a distant-term goal to which the pledgor will not be held accountable,[260] or an aggressive

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251. Lazarus, *supra* note 128, at 1159.

252. Coglianese, *supra* note 22, at 143.

253. Bodansky, *supra* note 22, at 290 (noting that "[e]ven the biggest fans of the Paris outcome do not claim that it puts the world on a pathway to limiting climate change to well below two degrees Celsius").

254. Banda, *supra* note 5, at 360 ("Voluntary commitments within the U.N. framework have not always been successful."); Jill E. Fisch, *Making Sustainability Disclosure Sustainable*, 107 GEO. L.J. 923, 948-49 (2019) (claiming that corporate disclosure as a measure of action is "fragmented, unreliable, and incomplete").

255. *See, e.g.*, Tim Büthe, *Global Private Politics: A Research Agenda*, 12 BUS. & POL. 1, 6 (2010) (reviewing "the supply of private regulation"); Kenneth Abbott & Duncan Snidal, *Strengthening International Regulations through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT'L L. 501 (2009) (reviewing features of multistakeholder governance mechanisms); Jessica F. Green, *Order out of Chaos: Public and Private Rules for Managing Carbon*, 13 GLOBAL ENV'T POL. 1 (2013) (reviewing effectiveness of private activity in climate context).

256. Jason MacLean, *Rethinking the Role of Nonstate Actors in International Climate Governance*, 16 LOY. U. CHI. INT'L L. REV. 21 (2020).

257. Nathan Campbell, *The Duty to Update Corporate Emissions Pledges*, 74 VAND. L. REV. 1137 (2021).

258. *See id.* (noting Kraft Heinz, Levi Strauss, and Amazon as prominent examples; while Amazon pledged net zero carbon by 2040, it "observed a 15 percent increase in its overall carbon emissions from 2018 to 2019").

259. *See, e.g.*, *Net Zero Space*, *supra* note 206206 and accompanying discussion (concerning orbital debris pledges).

260. *See, e.g.*, HUNTER, Supp., *supra* note 119, at 4-6 (discussing Glasgow pledges).

goal for which they will not have to answer.[261]

International lawyers have long been preoccupied with the effectiveness of law in terms of compliance (effectiveness in legal terms) and behavioral change (effectiveness in political science terms).[262] Indeed, compliance problems are not unique to pledging, but pose challenges to international legal regimes of many times.[263] As the literature on climate pledges makes clear, a state can comply with unambitious pledges (legal compliance) and might make some changes in accordance with those pledges (behavioral change), while the problem remains substantially unsolved.

This appearance of commitment to resolving a problem without accountability over the significance of the actions taken has been characterized as "greenwashing" in the private sector context.[264] Greenwashing is the label applied to behavior that attempts to distract audiences from environmentally detrimental activity—for example, optimistic, forward-looking statements about environmental commitments that prove to be empty in practice.

A public choice theorist might describe these empty or ineffective commitments as activity designed to blunt the demand for regulatory action.[265] Both characterizations describe the kinds of exploitation to which the pledging order is vulnerable. As Megan Mills-Novoa and Diana Liverman put it: "[N]on-binding and flexible [also means] limited action, measurement and accountability."[266] The structure demands neither enforcement nor vision.[267] What it demands is activity, and that is exactly what it produces: activity as smokescreen for stasis.

2. *Equity Concerns*

The second concern that is evident in the literature on pledging in the Paris Climate context is a concern I will characterize as a matter of equity. As Cinnamon Carlarne and JD Colavecchio point out, the Paris Agreement is on its

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261. *See id.* (discussing Glasgow pledges); *see also "Climate Commitments Not on Track to Meet Paris Agreement Goals" as NDC Synthesis Report is Published*, U.N. CLIMATE CHANGE (Feb. 26, 2021) (reporting on failure by parties to meet Paris pledges and overall goal).

262. *See, e.g.*, Timothy Meyer, *How Compliance Understates Effectiveness*, 108 AJIL UNBOUND 93, 94 (2014) (pointing to "a great deal of scholarship" on international legal effectiveness and compliance).

263. Compliance has therefore been of longstanding interest to international lawyers and scholars. *See, e.g.*, *id.* (referencing "a great deal of scholarship").

264. William Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. BUS. ETHICS 253, 255 (2003) ("The emergence of the term[] 'greenwash' . . . reflect[s] an increasing apprehension that at least some corporations creatively manage their reputations with the public, financial community, and regulators, so as to hide deviance, deflect attributions of fault, obscure the nature of the problem or allegation, reattribute blame, ensure an entity's reputation and, finally, seek to appear in a leadership position.").

265. *See* Jane S. Shaw, *Public Choice Theory*, THE CONCISE ENCYC. OF ECON. (1st ed. 2001), https://www.econlib.org/library/Enc1/PublicChoiceTheory.html (summarizing approach and concerns of public choice theory).

266. Mills-Novoa & Liverman, *supra* note 80, at 11.

267. Carraro, *supra* note 249249, at 185.

face sensitive to climate justice and fairness concerns.[268] In their analysis, the Paris Agreement's framework appears to "provide more expansive opportunities to integrate considerations of climate justice and fairness . . . by creating a more open and transparent forum within which parties can formally stake out their positions."[269] Yet the reality is that while this openness may provide *opportunities* to embrace climate justice and fairness concerns, it offers no structured response to those concerns. It neither requires any state to accommodate justice or fairness concern in its pledge, nor enforces attention to justice or fairness issues in other ways. Carlarne and Colavecchio put it this way: "The concern, of course, is that . . . this model could also deepen existing patterns of global inequity by shifting greater relative mitigation responsibility to developing countries while many developed countries continue to do relatively little."[270]

Building on that analysis, the pledging architecture does not make formal differentiations between developed and developing countries, and there is a ready critique that this is detrimental to principles of equity and justice. Recall that in the interstate system, one origin story for the pledging architecture is the principle of "common but differentiated" responsibilities, which is a global justice idea.[271] The principle stands for the proposition that the responsibility is "common," in that climate change is a global problem, but it is "differentiated" in that different states should bear different obligations.[272] That principle was meant to suggest that the industrialized Global North—which had taken advantage of cheap fossil fuels to improve standards of living and in so doing produced the vast majority of historical emissions—bears a greater responsibility to bear the costs of climate stabilization. The principle recognizes that the Global South, still behind in the industrialization race, should have reduced obligations and should receive support from the Global North in its transition to sustainable energy.

The pledging order marks both the apotheosis and decline of this justice principle. For example, the Paris Agreement represents the full manifestation of differentiation, in that every country can define its own nationally determined contribution. Obligations are not just differentiated, as they were in earlier agreements, according to Global North and South divides, or between developed and developing states. Rather, obligations can be micro-differentiated according to the respective statuses and capacities of states within those larger categories. The same is true for pledges outside the system of formal international law.

In increasing differentiation, however, the pledging architecture actually reflects a diminished capacity to respond to justice and equity concerns. The two-

268. Carlarne & Colavecchio, *supra* note 22, at 115.

269. *Id.*

270. *Id.* at 113.

271. *See supra* Section II.B.

272. *See supra* Section II.B; *see also* Felipe Ferreira & Christina Voigt, *'Dynamic Differentiation': The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement*, 5 TRANSNAT'L ENV'T L. 285, 286-89 (2016) (describing climate change as a global problem, for which developed countries bear a greater responsibility, and which entitles developing countries to reduced obligations and additional support).

tier structure ensured that historic emitters were responsible for a larger share, reflecting their greater responsibility and capacity. Conversely, the autonomous pledging structure has no formal mechanism to enforce greater effort by some parties or enforce compliance with an equity- or justice-based differentiation. Rather, it facilitates bespoke pledges that may or may not reflect higher ambition by historic emitters. The architecture itself is equalizing and flattening.

In the future, the pledging paradigm could erode not just formal differentiation according to historical responsibility or structural justice principles, but also the sense of collective responsibility that the "common but differentiated" responsibilities paradigm was meant to encourage. It could also shift an unjust, inequitable, and disproportionate share of the responsibility to combat climate change onto countries in the Global South. This concern was aired by states in the Global South at the Paris Climate Conference; they were reluctant to accept the "move away from binary differentiation," because of the concomitant move away from an affirmation of the greater responsibility for the Global North.[273]

In sum, the pledging format—as it is instantiated in the Paris Climate Agreement—erases the appearance of inequality by making all pledges formally equal. At the same time, it may entrench existing inequalities by failing to assign to any state or group of states the burden of remedying them.[274]

B. As a Departure from Existing Orders

This next portion broadens the aperture from critiques of pledging as an ordering mechanism, and particularly those critiques extrapolated from the literature on the Paris Climate Agreement. Instead, it turns to structural features of the pledging world order and considers how they appear to depart from key principles of prior orders. The pledging world order appears to mark the diminishing significance of distinctions between the public realm and the private; between the sovereignty and international authority of the state and that of sub-state municipalities; between law based on consent, according to the foundational doctrines of the interstate system, and the new quasi-, soft, or informal lawmaking methods; and between deep and shallow forms of international cooperation. Taken together, some of these eroding distinctions reflect a twenty-first century move noted elsewhere in the literature from status to function. They also point to the decline of established features of the Westphalian and postwar orders, and in turn contribute to that decline.

Here is a brief definitional primer on those earlier orders: The Westphalian order, which reflects the fundamental organization of the international system throughout the past three and a half centuries, is the order of sovereign states that

273. Dan Bodansky, *Reflections on the Paris Conference*, OPINIOJURIS (Dec. 15, 2015), http://opiniojuris.org/2015/12/15/reflections-on-the-paris-conference ("[M]any developing countries accepted the move away from binary differentiation only reluctantly.").

274. *See, e.g.*, Mills-Novoa & Liverman, *supra* note 80, at 1 (noting persistent and stark contrasts in discourses between the global North and South that reflect deeper debates regarding justice and equity").

arose from the Treaties of Westphalia in 1648.[275] Its principal tenet is that states are the fundamental units on the international stage: States have full sovereignty over their recognized territories; there is a separation between the domestic realm and the international one; only states have the competence to make international law; and only states are subject to it.[276] The postwar order, also known as the "rules-based international order," was designed by the victors of the Second World War.[277] It is characterized by the dominance of the United Nations system and the proliferation of multilateral treaties addressing various global issues. Its agenda is to create peace and economic prosperity by aligning the world around a broad set of legal norms.[278] In eroding distinctions between public and private, multilateral and local, and law and not-law, the pledging order expresses the deep twenty-first century challenge to these fundamental ideas.[279]

1. Law/Not-law

A first observation extends from the effectiveness concerns in the existing literature on the structure of the Paris Climate Agreement.[280] The pledging architecture contributes to a hollowing out of binding law, building on a larger trend toward soft and non-binding international agreements.[281] It creates the *appearance* of a major legal response to a problem, which belies its lack of substantive core. This space between appearance and reality can blunt calls for further legal response. Functionally, the pledging architecture narrows the space and blurs the distinction between law and not-law.

Consider the structure of the pledging architecture. As the literature on the Paris Agreement has observed, there are binding features of the Agreement—such as the requirement to declare successive national determined contributions—but the substantive commitments themselves are non-binding. The agreement is therefore both binding and non-binding. This feature is not particularly unique to the Paris Agreement—many international agreements have both binding and non-binding features—but the Paris pledging architecture is unusual in having its *core substantive obligations* in non-binding form, rather than maintaining a binding core and rendering non-binding only subsidiary matters, like the choice of a dispute resolution mechanism. The Agreement's use of the pledging structure thus contributes to a further hollowing out of binding law and functionally obscures the distinction between law and not-law.

As a matter of formal law, it is possible to distinguish between the binding and non-binding portions of the Agreement—between law and not-law.

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275. *See generally Westphalian State System*, *in* The CONCISE OXFORD DICTIONARY OF POLITICS (Ian McLean & Alistair McMillan eds., 2009) (describing this system and its origins).

276. *See id.* (reviewing these points).

277. Michael J. Mazarr, *The Real History of the Liberal Order*, FOR. AFFS. (Aug. 7, 2018), https://www.foreignaffairs.com/united-states/real-history-liberal-order.

278. *Id.*

279. For one of many compelling reviews of these challenges, *see* Rodrik & Walt, *supra* note 16.

280. *See supra* Section V.A.1.

281. *See* Oona A. Hathaway et al., *The Failed Transparency Regime for Executive Agreements: An Empirical and Normative Analysis*, 134 HARV. L. REV. 629, 675 (2020) (identifying this trend).

However, functionally, centering the non-binding portions in the heart of the agreement creates the appearance of legal control with very little practical effect. Formally, the Paris Agreement *seems* like any other international agreement: It was negotiated at an international conference by national representatives, it opened for signature with all the appropriate formalities, entered into force, and is subject to interpretive rules like any other binding international instrument.[282] But despite all these formalities, the core commitments of this instrument are non-binding—no more binding, perhaps, than the commitments in a casual conversation by heads of state over lunch. Functionally, this blurs the lines and minimizes the distinction between law and not-law.

Turning from the structure of the Paris Agreement to the idea of pledging as an "order," there is functional blurring between formal law and non-legal ordering here, too. Consider the proliferation of pledging platforms by a wide variety of actors. A leading and highly respected casebook on international law reports on the successes of COP26 at Glasgow by listing not just interstate pledges, but also those made within the Glasgow Financial Alliance for Net-Zero.[283] Pledges by bankers have equal status, in this narrative, with pledges by states. This pattern repeats elsewhere: Private pledges from the Davos conference receive attention in the popular press that is very similar to reporting on interstate agreements.[284] Sub-state entities have symbolically ratified the Paris Climate Agreement and publicize their own pledges.

Law—in the form of the Paris Climate Agreement and other pledging treaties—may have a different formal status than its non-legal relatives like the Global Compact or Paris Peace Forum pledges about orbital debris. But when those pledging treaties are not even binding in their own substantive core, and when the non-legal pledging platforms have the same structure and aims as the formal law, it is reasonable to ask how much work those formal distinctions are still performing.

2. *Deep/Shallow Cooperation*

Pledging is formally "non-cooperative."[285] While the content of a pledge may be a product—to some degree—of informal bargaining, the pledges themselves are individually determined, independent, and not formally related to any other pledges. The pledging format eschews the negotiated formats of legislation and contract and chooses loosely organized volunteering.

In the legal arena, the treaty conference usually serves as a negotiating forum, where the ultimate product is a bargain that binds all parties. However, in the pledging context, the parties negotiate only the structure: the pledging platform, the ultimate goal of the pledges, and the mechanisms of commitment and compliance (such as publication of pledges, reporting, accounting for

282. Vienna Convention, *supra* note 55, art. 31.
283. HUNTER, Supp., *supra* note 119, at 8.
284. *See, e.g.*, Gelles, *supra* note 199199 (reporting on Davos pledges).
285. Carraro, *supra* note 249249, at 177.

compliance, and successive pledges). The key substantive commitment is the pledge, and this is not formally negotiated, but rather generated by each pledging party. The pledges are meant to constrain only the pledgor. In the Paris Agreement context, for example, there is no formal sanction for noncompliance, and no formal accountability for even the relative ambition of the pledge. The pledging architecture thus offers a common structure with binding elements while allowing near-complete autonomy for states joining it. This format is replicated in other contexts, such as the Glasgow Financial Alliance for NetZero, and the multitude of other non-state climate pledging platforms. In each context, pledging entities do not negotiate, they declare. They cooperate in committing to a common goal, and to some procedural commitments related to that goal, but their substantive commitment in service of that goal is fully autonomous. They are not accountable to a common standard, but supply their own standard.

This move from deeper to shallower means of cooperation marks a retreat from the high-water mark of postwar organization in the late twentieth century. Writing just after the turn of the century, Ikenberry had noted a gradual increase in institutionalization over the prior two centuries and predicted a steady move toward constitutionalization of world affairs.[286] This move toward shallow cooperation reverses that constitutionalization trend. Unable to agree on common standards, states have institutionalized their affairs in the climate context only at the margins. This marks a contrast to early postwar agreements like the Genocide Convention which attempted to set a universal moral code.[287] It also marks a substantial change from the many forms of delegation of sovereign authority that has characterized recent international law and governance.[288]

3. *Public/Private*

As a functional matter, the pledging order minimizes distinctions between the public and the private realm. The idea requires unpacking: One of the main reasons to characterize pledging as an ordering mechanism is to identify a regularity of structure across many different pledging platforms, whether they be formal intergovernmental law, U.N.-sponsored efforts, subnational platforms, purely private projects, or multistakeholder efforts. This regularity encompasses a large amount of activity, and, specifically, it crosses the public/private divide. While pledging and pledging platforms may have had separate origin stories in climate law and in the United Nations system, they now follow the same format.

This regularity does not blur any distinctions in *formal* law. Treaties are treaties, and private pledges are purely private ordering. But *functionally* it diminishes distinctions between public lawmaking, private efforts, and everything in between. Banks, nations, philanthropists, and multinational corporations can pledge. The pledges take the same form and are celebrated in

286. *See* IKENBERRY, *supra* note 222222, at 19-20.

287. *See* Reservations to Convention on Prevention and Punishment of the Crimes of Genocide, Advisory Opinion, 1951 I.C.J. 15, 26 (May 28) (describing the aims of the Convention).

288. *See supra* Section II.A.5.

the same channels. The same international, intergovernmental conferences can produce and promote pledges by both public and private actors. COP21 in Paris produced the Paris Agreement. Six years later, COP26 in Glasgow produced the Glasgow Financial Alliance for Net Zero. Both solicit, publicize, and demand accountability for pledges. The products of these intergovernmental conferences look the same and have the same features. The climate stabilization goals remain the same. The two pledging platforms simply enlist different actors to pledge and comply.

The technology of pledging does not give pride of place to national representatives. This is possible because pledges bind only the pledgor. They are not reciprocal, contractual commitments between bilateral treaty parties; they are not legislative acts that bind all treaty parties; they are not susceptible to enforcement by state-backed force. Rather, they are enforceable only through reputational sanctions—a sanctioning power that does not require public authority or the apparatus of the state.

The fact that pledging does not require public representatives or public sanction blunts the call for some sort of special status to be afforded to national representatives in spaces of public deliberation. It eliminates the need for a distinction between different sorts of entities at an intergovernmental conference. All participants can contribute to the mission of the conference through the same means: pledging. Thus, all might theoretically participate on equivalent terms. There is no reason to preserve a space of separateness where public representatives make bargains. Indeed, nongovernmental and multistakeholder conferences like the World Economic Forum and the Paris Peace Forum have begun to mimic the form of interstate ones, launching pledging platforms parallel to those in formal law, featuring both public and private actors pledging on equal terms.

Pledging is not privatization, exactly, though this concept captures an aspect of the pledging world order. Privatization of governmental functions was emphasized as part of the neoliberal Washington consensus package as a way for governments to leverage the private sector to raise revenue and make their delivery of services more efficient. Privatization has extended to telecommunications, resource extraction, pension delivery, incarceration, and other services. Some commentators note that privatization has come to the international stage as well, with international organizations relying on private actors to provide governance and services that were once understood to be within the ambit of the public.[289] The pledging world order might be understood as part of this trend toward outsourcing public goals to private actors, but the point is

289. *See, e.g.*, Christer Jönsson, *The John Holmes Memorial Lecture: International Organizations at the Moving Public-Private Borderline*, 19 GLOB. GOV. 1, 3 (2013) (describing the United Nation's embrace of private actors as a "pronounced trend"); Chesterman, *supra* note 242, at 8 (noting in the humanitarian law context that "a growing number of treaties envisage specific roles for NGOs"); *see also* Larry Catá Backer, *Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board, and the Global Governance Order*, 18 IND. J. GLOB. LEG. STUD. 751, 761 (2011) (noting that multinational enterprises have come to exercise transnational regulatory authority).

functional, not formal. What privatization captures about the pledging world order is that the intergovernmental system has, in some areas, functionally ceded or shared its mandate to offer regulatory solutions. While pledging is not an explicit delegation of public functions to the private sector, the regulatory void in the face of pressing global problems functions as an implicit delegation of authority to the private sector to self-govern.

4. Nations/Subnational Entities

Pledging marks a diminishment in the importance of the divide between nation-states and other units of public authority.[290] Again, this is as a functional matter, not as a matter of formal law—or at least not yet. Cities, states, and regions are symbolically joining interstate pledging platforms, and forming their own.[291] Under formal definitions, these subnational entities are invisible under international law, falling within the jurisdiction of sovereign states. Their pledging platforms are not formal international law. However, these pledging efforts are in format the same as the efforts by national entities. They are meant to fill gaps in those national projects. This activity also reflects an assertion of authority by subnational entities on the global stage that may come to erode the status-based legal norms of the Westphalian order.

C. As a New Form of Order

The prior sections offered an assessment of pledging as a form of ordering that departs from some of the key principles and premises of dominant existing orders. The discussion has been framed to highlight disruptive features of these departures and differences. This final discussion shifts focus. Another way to think about the pledging world order is to consider the positive features of this order. If the pledging world order departs from key features of earlier orders, what new kind of order does it represent? What are its characteristics, values, and principles? What tradeoffs does it present? The order reflects what I will call a principle of "coordinated autonomy."[292]

The coordinated autonomy of the pledging world order has at least three principal features: It emphasizes (1) function over status; (2) volunteerism over legislative rules; and (3) social sanction over legal consequence. In so doing, it

290. *See supra* notes 20, 179 and accompanying discussions (concerning role of cities and regions in response to climate change); *see generally* HELMUT PHILIPP AUST ET AL., RESEARCH HANDBOOK ON INTERNATIONAL LAW & CITIES 1 (2021) (describing the "rich and diverse research field . . . dealing with the increasingly global activities as well as character and role of cities in the age of globalisation").

291. They are forming pledging platforms not just in climate law but also in international human rights law. *See* Barbara Oomen & Moritz Baumgartel, *Frontier Cities: The Rise of Local Authorities as an Opportunities for International Human Rights Law*, 29 EUR. J. INT'L L. 607 (2018).

292. Harlan Cohen suggests a metaphor to communicate this principle: coordinated autonomy is a "potluck." That is, each person decides what they will bring to the meal, but they decide on a common time and place to meet and communicate their plans ahead of time. They might also agree on some loose parameters on what various groups might bring. The suitability and quality of potluck dishes are judged socially and this social assessment can bring reputational benefits or busts, but there is no other form of consequence for performing poorly. (Unlike a restaurant, which involves a transaction: meals must be paid for.)

makes a series of tradeoffs, answering some legitimacy questions by devolving decision-making to smaller units of organization; increasing participation by justice agnosticism; and increasing participation and ambition by decreasing negative sanctions for noncompliance.

1. Features

Function over Status. Older orders emphasized the special status of states; created distinctions between the public and private and the domestic and international realms; and tried to bind all nations to common rules. The emerging order de-emphasizes status, encouraging productive commitments by any kind of actor—public or private, national or municipal. Simon Chesterton has hypothesized "a possible evolution in the international order where the *status* of an actor (state, intergovernmental organization, NGO, etc.) is less important than its function."[293] Chesterman notes that NGOs and other members of civil society perform various roles in conflict zones that were "previously arrogated to the state."[294] Rather than consider them governmental actors, he observes, states seem to simply allow them to exercise more legal powers. Chesterman claims that this might be part of a broader movement in international law:

> [I]t is possible that we are at the beginning of a transformation. . . . In medieval times, one's legal position in society was largely ascribed by the group to which one belonged—slave, serf, freeman, and so on. Modern law [later] recognized a degree of autonomy in choosing these relations, a transformation . . . famously described as the move from status to contract. It is possible that, at the international level, we are now seeing something similar. As the legal order of states gives way to something much more fluid, we may be seeing a move from status to *function*.[295]

Chesterman's analysis is part of a substantial literature on what international law has to say about the legal personhood of states in contexts of privatization and a shifting public-private divide.[296]

The pledging order offers support for theories, by Chesterman and others, that "the legal order of states" may be "giv[ing] way to something much more fluid."[297] The order's means of coordination does not depend on the formal status of states but can embrace actors at every level of government and across the public-private divide. The appearance of this form of order bolsters the emerging idea that the functional capacity of an actor to address a problem could matter more in twenty-first-century ordering than the identity of the actors providing that capacity.

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293. Chesterman, *supra* note 242242, at 159.

294. *Id.* at 166.

295. *Id.* at 167-68.

296. *See, e.g.*, Frederic Megret, *Are There Inherently Sovereign Functions in International Law?*, 115 AM. J. INT'L L. 452 (2021) (inquiring whether international law requires states to perform particular functions); Daniel Lee, *Defining the Rights of Sovereignty*, 115 AJIL UNBOUND 322 (2021) (linking current scholarly conversation to concerns in early modern Western legal thought); Laura Dickinson, *Public Law Values in a Privatized World*, 31 YALE J. INT'L L. 383 (2006) (proposing administrative law protections at the international level to redress privatization concerns).

297. Chesterman, *supra* note 242242, at 167.

Volunteerism over Legislative Rules. The pledging world order invites actors to offer individually determined pledges rather than requiring them to negotiate, agree upon or comply with a common standard. It thus de-emphasizes the importance of binding/non-binding and legal/non-legal distinctions and encourages voluntary action and innovation. It is organized on a principle of pro-social volunteerism rather than legislative institutionalization.

Commentators have noted some of these features in the context of the Paris Climate Agreement, though many commentators focus on the Paris Agreement's lack of formal sanction for noncompliance. This literature notes that the format of the Paris Climate Agreement emphasizes "voluntary cooperation"[298] and encourages greater ambition.[299] In Sachs' analysis, "[s]tates may prefer legally binding agreements when they embody less ambitious commitments, and may be willing to accept more ambitious commitments when they are less legally binding."[300] Carlarne and Colavecchio cast this retreat from legality and bindingness in terms of pluralism, arguing that the Paris format offers "a more pluralistic form of global cooperation," which "enables states to experiment and be more ambitious in their individual and collective efforts to address climate change."[301]

A volunteering principle thus encourages both ambition and experimentation. The voluntariness feature is also related to the status/function feature, in that volunteering requires authority only over oneself or the unit for which one volunteers, not a broader public authority over a population, as required for legislative authority. The voluntariness feature is also related to the next feature of the pledging order: the emphasis on social sanction over legal consequence.

Social Sanction over Legal Consequence. Rather than building in formal sanctions for noncompliance, the pledging order relies on social and reputational mechanisms to encourage activity. It uses the socially inflected language of "ambition" rather than the legally-inflected "obligation." For example, in the Paris Agreement context, commentators observe that the pledge and review format "creates a continuous cycle to take advantage of peer and public pressures to motivate."[302] Enforcement is through the "soft but significant" mechanism of "shaming."[303]

Taken together, these features create a kind of order organized around mutual production of useful activity, rather than an order of mutual restraint.

298. Paris Agreement, *supra* note 18, art. 6.1.

299. *See, e.g.*, Mills-Novoa & Liverman, *supra* note 80, at 11 (making these points).

300. Sachs, *supra* note 22, at 873 (citing Robert Stavins et al., *International Cooperation: Agreements and Instruments*, CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE, WORKING GROUP III 27 (2014)).

301. Carlarne & Colavecchio, *supra* note 22, at 111.

302. Fatima Maria Ahmad et al., *The Paris Agreement Presents a Flexible Approach for U.S. Climate Policy*, 11 CARBON & CLIMATE L. REV. 283, 284 (2017) ("Rather than rely on punitive legal enforcement measures, the Paris Agreement provides a framework that creates a continuous cycle to take advantage of peer and public pressure to motivate countries.").

303. Jennifer Jacquet & Dale Jamieson, *Soft but Significant Power in the Paris Agreement*, 6 NAT. CLIMATE CHANGE 643, 645-46 (2016) (explaining that "shaming" is the "soft but significant" enforcement mechanism for the Paris Agreement).

Returning to Ikenberry's early twenty-first century analysis: His conception of order in the international system centered war as the principal manifestation of disorder. Orders in his account are "postwar settlements," and ways to solidify the postwar peace.[304] The pledging order is not a postwar settlement. Rather, it highlights what is perhaps the increasing importance of proactive orders—that is, a means of ordering not to restrain power, but to produce activity helpful to the common good. This shift tracks the shifting nature of emerging problems: The existential threats of the current context are not just warring neighbors, but climate change, orbital debris, and other forms of pollution. These problems require activity, not restraint.[305] An order organized around activity might require less constitutionalism—common rules that restrain or prevent a return to power relations—and more effort: common effort, independent effort, or simply effort of any kind. Thus, the features of the pledging world order might reflect the coordination needs of a particular kind of global problem—such as global commons problems. The persistence of the pledging world order compared to other orders might come, over time, to reflect the relative urgency of this kind of problem. Perhaps it also reflects the fact that in the case of aggregate public goods, productive governance activity can come from many sources beyond just national governments.

By way of coda, this model also reflects a different sort of twenty-first century reality: the presence of over 200 sovereign nation states on the global stage. The coordinated autonomy model cuts through the inefficient bargaining of a system with over 200 sovereign nation states by creating a common shell within which smaller subsets of states can informally bargain and agree.

2. *Tradeoffs and Responses*

The pledging world order presents a number of tradeoffs. First, consider legitimacy. While prior sections have focused on ways that the pledging order marks the erosion of important principles of prior orders, the pledging order might also be seen as an advance on those existing orders, opening up capacity and responding to legitimacy concerns regarding deep coordination in the absence of a global demos.[306] Samantha Besson and José Luis Martí have identified a raft of concerns with the democratic legitimacy of international lawmaking, taxonomizing these as concerns about "lack of representativeness,

304. IKENBERRY, *supra* note 222222, at 3.

305. *Cf.* Jacob Katz Cogan, *The Regulatory Turn in International Law*, 52 HARV. INT'L L.J. 321, 329 (2011) (describing a "regulatory turn" where international law increasingly "assert[s] direct regulatory control over individuals" and "deepen[s] the regulatory obligations of states in relation to their subjects"; this turn is the product of a new set of demands on the international system stemming from the perception that individuals and nongovernmental actors (not just state actors) pose threats).

306. Daniel Bodansky, *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?*, 93 AM. J. INT'L L. 596, 596 (1999) (noting that "as decision-making authority gravitates from the national to the international level, the question of legitimacy will likely emerge from the shadows and become a central issue in international environmental law").

democratic inequality, and lack of deliberative contestability."[307] They argue for a model that focuses on self-governing political communities.[308] The point is that legitimacy criteria should focus on the representation of individual communities, and that the legitimate authority of any actor—state, supra- or subnational, private—should arise out of responsible methods of deliberative democracy. The pledging order, moving to a system of coordinated autonomy, might offer one sort of instantiation of this principle by devolving decision-making to smaller units—individual pledgors of all kinds—rather than global legislative bodies constituted by states.

The pledging order also offers a tradeoff between participation and justice. Trading between top-down rules and bottom-up volunteerism relinquishes principles of distributive justice because it can no longer enforce stratified commitments that respond to historical or structural injustices. It expresses justice agnosticism.

Finally, the pledging order may offer tradeoffs between participation and effectiveness. The jury is still out on this. In the climate context, the initial reports are not good.[309] Again, to refer to a prior analysis, pledging is a technology of action, but not of result. The problem is that it is unclear whether any other course of action would be more effective. Perhaps, in making participation gains, this ordering mechanism does better than other candidates.

The tradeoffs the pledging world order embraces, in comparison with earlier orders, might be collected and simplified in the following way:

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307. Samantha Besson & Jose Luis Marti, *Legitimate Actors of International Law-making: Towards A Theory of International Democratic Representation*, 9 JURIS. 504, 516 (2018).

308. *Id.* at 530.

309. *See, e.g.*, Stéphane Dion & Eloi Laurent, *Climate Action beyond the Paris Accord,* DOCUMENTS DE TRAVAIL DE L'OFCE 2015-22, OBSERVATOIRE FRANCAIS DES CONJONCTURES ECONOMIQUES (OFCE) (2015) (describing as a "Paris Paradox" the fact that Paris is an "unprecedented universal climate agreement that will not solve our climate crisis").

▼ **Deemphasizes**	▲ **Emphasizes**
Status	Function
Rules	Participation
Restraint	Activity
Redistribution	Autonomy

Figure 1. Tradeoffs

What is next? Rejecting the pledging order could include trying to reclaim the strong rules-based approach of the postwar system or the western-led neoliberal multilateralism of the post-Cold-War era, to move beyond that to an even more constitutionalized global system,[310] or to find some new means of organization. Alternatively, the international order might return to an even earlier system of Westphalian cooperation where states are the dominant units on the international stage and largely sovereign over affairs within their territory. While the latter solution would seem to align well with the isolationist populism of the early twenty-first century, it sets aside the growing interconnectivity of the economy and environment, which produce an ever-growing demand for substantial international cooperation.

Another possibility, then, is to lean into the pledging world order and try to identify the conditions for its success. Recognizing the potential upsides of the pledging order offers room to design solutions to the problems identified in the prior section: How can we distinguish serious pledges from non-serious ones? How can the international system best enforce the pledges that have been made? How should we think about the structure of governance a pledging system would require? These questions, like many others reviewed here, merit more study.

CONCLUSION

It can be easy to announce the collapse of current orders. One need look no further than the headlines to have the sense that the postwar order built on the U.N. Charter's vision of peaceful coexistence has suffered irreparable harm.[311] It is harder to see and describe emerging orders—to imagine what kind of world is coming.[312]

310. *See supra* notes 286-88 and accompanying discussion; *see also* Anne Peters, *Against a Deconstitutionalisation of International Law in Times of Populism, Pandemic, and War*, 9 J. CONST. JUST. 135 (2022).

311. Hurst Hannum, *International Law Says Putin's War Against Ukraine is Illegal. Does That Matter?*, U.S. NEWS (Feb. 25, 2022), https://www.usnews.com/news/best-countries/articles/2022-02-25/international-law-says-putins-war-against-ukraine-is-illegal-does-that-matter; Patrick Kingsley, *Ukraine War Sets Off Europe's Fastest Migration in Decades*, N.Y. TIMES (Mar. 1, 2022), https://www.nytimes.com/2022/03/01/world/europe/ukraine-war-migration.html; *see generally* Rodrik & Walt, *supra* note 16 ("The global order is deteriorating before our eyes.").

312. *Cf.* Rodrik & Walt, *supra* note 16 ("It is possible—some would say likely—that mutual suspicion, incompetent leadership, ignorance, or sheer bad luck will combine to produce a future world order that is significantly poorer and substantially more dangerous than the present one. But such an outcome is not inevitable.").

Conceiving of pledging as part of that new world order helps clarify the transition from older orders. This order is a product and symptom of their decline; at the same time, it brings new values and principles into view. Older orders emphasized the special status of states, created distinctions between the public and private and the domestic and international realms, and tried to bind all nations to common rules. The emerging order eschews these agendas. It de-emphasizes status, facilitates innovation, and celebrates productive commitments by any kind of actor: public or private, national or municipal. It does not rely on common commitments. In sum, the new order offers new values, but also presents tradeoffs. It is time to be clear-eyed about these.

New world orders need not be intentional. They can develop by design, but also by accident. The choice for reformers, governments, corporate actors, investors, and the world community is to decide whether and when to intervene in the devolution of existing orders with major structural changes that might offer something different. A re-embrace of international rules and multilateral cooperation? A move to governance by regions and city-states? Privatized governance? Or the soft-law, non-law, all-hands-on-deck hodge-podge that is the pledging world order? The twenty-first century is bringing change—and presents different possible futures.